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ABSTRACT

Prepared under contract with the International Council on Archives (ICA), this study is intended to assist information policy and planning specialists; those involved in proposing, drafting and reviewing legislation and administrative regulations; and especially archivists and records managers, in creating, developing, and evaluating modern archival and records management systems and services. Based on an analysis of current legislation and regulations in nearly 120 countries, the study presents a set of guidelines to assist in planning or reviewing the legal and administrative instruments that are essential for viable systems and services. Following an introduction, the document is divided into five sections: (1) Jurisdiction and Organizations; (2) Records Management Functions; (3) Archival Functions and Activities; (4) Enforcement; and (5) Guidelines for Legislation and Regulations. A bibliography is included. (THC)

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Archival and records management legislation and regulations: a RAMP study with guidelines

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ARCHIVAL AND RECORDS MANAGEMENT LEGISLATION AND REGULATIONS : A RAMP STUDY WITH GUIDELINES

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PREFACE

The Division of the General Information Programme of Unesco, in order to better meet the needs of Member States, particularly developing countries, in the specialized areas of records management and archives administration, has developed a coordinated long-term Records and Archives Management Programme - RAMP.

The basic elements of the RAMP programme reflect the overall themes of the General Information Programme itself. RAMP thus includes projects, studies, and other activities intended to:

1. Promote the formulation of information policies and plans (national, regional and international).
2. Promote and disseminate methods, norms and standards for information handling.
3. Contribute to the development of information infrastructures.
4. Contribute to the development of specialized information systems in the fields of education, culture and communication, and the natural and social sciences.
5. Promote the training and education of specialists in and users of information.

The present study, prepared under contract with the International Council on Archives (ICA) is intended to assist information policy and planning specialists; those involved in proposing, drafting and reviewing legislation and administrative regulations; and especially archivists and records managers, in creating, developing, and evaluating modern archival and records management systems and services, particularly in the public administration. Based upon an analysis of current legislation and regulations in nearly 120 countries, the study concludes with a set of guidelines to assist in planning or reviewing the legal and administrative instruments that are essential for viable systems and services.

Comments and suggestions regarding the study are welcomed, and should be addressed to the Division of the General Information Programme, UNESCO, 7 place de Fontenoy, 75700 Paris. Other studies prepared under the RAMP programme may also be obtained at the same address.

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0. INTRODUCTION.

1. This study is intended to assist information policy and planning specialists; those involved in proposing, drafting and reviewing legislation and administrative regulations; and especially archivists and records managers, in creating, developing, and evaluating modern archival and records management systems and services, particularly in the public administration. Based upon an analysis of current legislation and regulations in nearly 120 countries, the study concludes with a set of guidelines to assist in planning or reviewing the legal and administrative instruments essential for viable systems and services.

2. Unesco and the International Council on Archives (ICA) have been concerned for a number of years with archival legislation, and Unesco's assistance to Member States in the development of infrastructures for archives and records management has generally included advice on archives and records management legislation./[1] Regional seminars have also been sponsored or organized by Unesco and ICA to increase awareness of the importance of archival legislation among archivists and administrators in different parts of the world. A manual of tropical archivology, written under the aegis of the ICA and published in 1968 with the co-operation of Unesco, contains a valuable chapter on principles of archival legislation and regulation which still deserves attention./[2]

3. In addition, ICA has devoted four volumes of its review Archivum (those for 1967-1971) to the publication of archival legislation of countries in all parts of the world, a fifth volume appeared in 1982, updating the former publication. In the past decade twenty countries have adopted new basic archival legislation. This "eloquently expresses the breadth of the movement towards renewal and of the growth of archival awareness taking place, a movement in which the activities of Unesco and the International Council on Archives clearly play a leading part". /[3]

4. A further contribution towards harmonizing archival legislation was Unesco's publication in 1972 of a Draft model law on archives, by S. Carbone and R.Guêze. This work however, was too closely

based on Latin, especially Italian, archival legislation to be of direct value to countries with a different experience. [4]

5. In 1972 Unesco organized an Expert Consultation on planning national archives services which endorsed a proposal to prepare a study concerning planning of archival infrastructures, of which guidelines on legislation and regulation should be a component. Partly on the basis of these recommendations B. Delmas included in his contribution to J.H. d'Olier-B.Delmas, Planning national infrastructures for documentation, libraries and archives; outline of a general policy (1975)[5], criteria for archival legislation and regulations, together with an outline model law on archives.

6. Finally, the 1977 Unesco publication Establishing a legislative framework for the implementation of NATIS [6] contains a checklist of points which should be considered for inclusion in legislation for a national archives system. These points are elaborated by A.W. Mabbs in two chapters, "Legislation for public records and the National Archives" and the "Co-ordination of national archive services", which deal with the broad criteria which might be applied in drafting archival legislation.
These chapters are of value for any archivist and administrator; they are based upon professional analysis of existing legislation and mature experience of archival needs, especially in developing countries.

7. All of the above indicated studies refer to legislation, published in Archivum and elsewhere, in general terms only. For a better understanding and a more thorough synthesis however, an analysis and comparison of current legislation is essential. The recently published volume 28 of Archivum has widened the field for such an analysis. Like several of the previous studies the present one offers a checklist and guidelines on subjects which should be considered for inclusion in archival legislation. These RAMP Guidelines, however, devote more attention to specific legislative questions concerning records management and they express preferences under specific circumstances for certain alternatives. They also indicate which provisions are considered essential, as con-

trasted with those that are only desirable or optional, depending upon conditions and circumstances in a particular country, with special attention to record-keeping traditions and administrative practices.

6. The analysis of current legislation and regulations is based mainly on texts as published in Archivum.
Excluded from these texts, however, are details of internal organization of archives services and their functioning, regulations on professional training and status of archives personnel, and detailed rules for selection, transfer, arrangement and description of archives.
Information about these subjects has been provided at the author's request from a selection of countries :

Argentina	L.R. Mendez, Chief of department, National Archives
Canada	W.I. Smith, Dominion Archivist
France	M. Duchein, Inspector general, National Archives
Hungary	J. Molnàr, Director, National Archives
Romania	I. Gal, Director general, National Archives
Senegal	S. Mbaye, Director, National Archives
Switzerland	O. Gauye, Director, Federal Archives.

9. In addition to the legislation published in Archivum and the publications listed in the Bibliography, the following documents have also been consulted :
Archives Bill 1983 (Australia)
Draft-Federal Archives law (Federal Republic of Germany);
Royal decree on records management 1980 (Netherlands);
Rhode Island (US) Archives and Records Management Act (draft);
Ordinance 1964: 504 concerning the use of writing material for state business (Sweden);
Presidential Records Act of 1978, United States, 44 USC, chapter 22;
Public Record Law 1972 (Cyprus)

10. Unesco invited M.Duchein (France), A.W. Mabbs (U.K.) and F. Pusceddu (Italy) to comment on the draft of this study. The draft was also circulated by the author among a number of colleagues to check

whether their national legislation had been interpreted correctly. These included :

Argentina	C.A. Garcia Belsunce, Director General, National Archives
Canada	W.I. Smith, Dominion Archivist
Czecho-Slovakia	V.Sykora, Director, Administration of Archives
Federal Republic of Germany	H.Booms, President of the Federal Archives
German Democratic Republic	R. Leipold, Director , State Archival Administration
Hungary	J. Molnár, Head of Department for Archives of the Ministry of Culture and Education
Malaysia	Z. Hanum Nor, Director General, National Archives
Poland	M. Wojciechowski, Director General, State Archives
Senegal	S.Mbaye, Director, National Archives
Sweden	N. Rosqvist, Section Head, State Archives
United States	R.M.McReynolds, Assistent Chief(Judicial,Fiscal and Social Branch, Civil Archives Division), National Archives and Records Service
U.S.S.R.	F.I. Dolgih, Director General, Central Archival Administration at the Council of Ministers.

The author has benefitted greatly from the comments and suggestions made by these experts.

11. This study makes the following distinction between legislation and regulations. Legislation is the product of the highest legislative authority of a nation (or,in a federal structure, a state), in a form appropriate to the constitution. Regulations may be regarded as embracing all measures concerned with the enforcement of legislation stricto sensu, i.e.,those enactments established by the legislature (Parliament with the collaboration of the executive body). Regulations,however,may be enacted by any administrative authority with regulatory powers ./[7]
In this study the term legislation is often used in a broad sense, encompassing both formal laws and regulations.

12. When referring to archival legislation and regulations of a particular country which has been either published in Archivum or been mentioned in paragraph 9, the exact location is provided only in the case of a quotation. Please note that legal texts in languages other than English, French, German, Italian, or Spanish were translated into one of these languages for publication in Archivum. If the text has been published in a language other than English, the author of this study has substituted his own translation, not from the original, but from the text as published. In this study countries are indicated with their short name in English according to the international standard ISO-3166-1981.

FOOTNOTES TO THE INTRODUCTION.

1. Two recent examples: C.V. BLACK, Grenada; archival development (FMR/PGI/81/182) (Unesco, Paris 1981); F.B. EVANS, The Republic of Cyprus: development of an archival and records management programme (FRM/PGI/81/166) (Unesco, Paris 1981) (PP/1981-1983/5/10. 1/03).
2. BAUTIER, Principles of archival legislation (see bibliography for full citation).
3. Foreword to Archivum, vol.28, p. 16.
4. For a critical review of this publication, see SC NEWTON, Journal of the Society of Archivists, vol. 4, nr. 8 (October 1973) pp. 654-659. The draft model was copied to a great exent in the Algerian archival law of 1977.
5. DELMAS, Archives.
6. Establishing a legislative framework for the implementation of NATIS.
7. BAUTIER, Principles of archival legislation, p. 33 .

1. JURISDICTION AND ORGANIZATION.

1.1 Definition of records and archives in general.

13. In a number of countries a distinction is made between records and archives. Records may be defined as

> recorded information regardless of form or medium created, received and maintained by an agency, institution, organisation or individual in pursuance of its legal obligation or in the transaction of business of any kind./[1]

Archives are a function of the records of an organisation or person. They may be defined as

> non-current records permanently preserved, with or without selection, by those responsible for their creation or by their successors in function for their own use or by an appropriate archival repository because of their archival value./[2]

In countries like Belgium, France, Indonesia, Italy, the Netherlands, Yugoslavia and Spain, the term archives encompasses both records and archives. However, legal texts of some of these countries make a distinction between "current" (or "administrative" or "dynamic") archives and "historical" (or "definitive") archives ./[3]
It should be noted that in some legislation the definition of records/archives comprises records/archives of public and private origin.

14. In current legislation one encounters the following types of definitions of records/archives :

(i) a general definition by purpose or provenance;

(ii) a general definition based on custody.

Furthermore, there are laws which do not contain a definition of record/archives, but an enumeration of different types of documents considered to be records/archives.

15. Legal definitions by purpose or provenance follow more or less the professionally accepted definition, "recorded information regardless of form or medium, created or received and maintained by an agency, institution, organisation or individual in pursuance of its legal obligations or in the transaction of business of any kind"./[4]

This definition follows closely that in US federal legislation, which applies to public records only :

> "record" includes all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of data in them./[5]

Comparable definitions are found in the legislation of Canada, Fiji, Liberia, New Zealand, the Philippines, Puerto Rico, and the US States of Illinois, Ohio and Wisconsin.

16. While these definitions stress both the evidential and informational value of records, other definitions narrow this to the informational value. According to the Yugoslavian law, archives are

> all documents, originals or reproductions (writings, drawings, printed material, photographs, films, phonograms and others), which are important for history and other scientific domains, for culture in general and for other social needs, and which have been created in the course of business of the former agencies and organizations of State..../[6]

The Hungarian law considers as archives:

> The documents which have a considerable historical value, from the point of view of economy, society, politics, law, national defense, science, technology, culture etc./[7]

This very broad definition is interpreted in a governmental order in which archives are defined as

> every written text, series of numerical characters, chart, map, musical notation, created by the functioning of an organization or the activities of a person, regardless of medium, form and graphical process of these documents./[8]

The law of Czechoslovakia provides that

> archival documents shall include written, iconographic, sound and other records which have been created through activities of State and other organs and organizations and through activities of individuals and which, in view of their historical, political, economic or cultural importance, possess an enduring documentary value./[9]

17. Definitions which include the nature of records as the product of the transaction of business, but which are silent about their evidential or informational value, are found in Malaysian and Singapore legislation, which consider as public records :

> papers, documents, records, registers, printed materials, books, maps, plans, drawings, photographs, microfilms, cinematograph films and sound recordings of any kind whatsoever, officially received or produced by any public office for the conduct of its affairs or by any officer or employee of a public office in the course of his official duties./10

Following the same pattern is the definition in the French archival law :

> Records are the whole of documents, regardless of date, form and physical support, created or received by any physical or juridical person and by every public or private agency or organization in the course of their activities./11

Comparable is the definition in the Archives Act of Lesotho :

> "archives" means any documents or records received or created in a government office or an office of a public authority during the conduct of affairs in that office and which are from their nature or in terms of any other law not required to be dealt with otherwise than in accordance with the provision of this Act.../12

and the definition of records in the Indonesian legislation :

> documents made and received by State Institutes and Governmental bodies, in whatever form, single or grouped in the framework of the implementation of governmental actions. /13

Very short, but acceptable, is the definition in the Dutch Archives Act: "public records are documents received or made by public bodies which by their nature should be preserved by such bodies"./14

Zaire's comparable definition includes "in the execution of its functions"./15"Public records" in the Victoria (Australia) legislation means :

> (a) any record made or received by a public officer in the course of his duties; and
> (b) any record made or received by a court or person acting judicially in Victoria, but does not include a record which is beneficially owned by a person or body other than the Crown or a public office./16

18. All the above definitions point to the <u>provenance</u> of records, as distinct from historical documents. In some legislation, however, the definition of records does not specify this essential quality. Such a definition, which combines records/archives with historical manuscripts /17 , is given by the Carbone-Guêze draft model law :

> The national heritage of historical archives shall include the documentary sources of the legislative, judicial, and administrative organs of the State; of public offices other than those

of the State; of private bodies and individuals; notaries' documents; and documentary sources, of whatever nature and provenance, deemed to be of major historical interest by the appropriate services of the archives administration. /18.

19. The legislation of socialist countries is based upon the concept of the "State Archival Fund". According to USSR legislation, the State Archival Fund

> "is the totality of documents owned by the State which have a political, economical, scientific, socio-cultural or historical value ...." /19
> The State archival Fund of the USSR consists of
> (a) the documents produced by the functioning of the bodies, organizations, and enterprises, existing or having existed on the national territory of the USSR....
> (b) the documents produced by ... Soviet institutions which are found or have been found abroad ...
> (d) the private documents which have become property of the Soviet state ... /20

20. The definition of public records in the legislation of the Bahamas, Botswana, Gambia, Ghana, Nigeria, Sierra Leone, Zambia and Zimbabwe is based on custody, rather than on provenance :

> "public records" or "records" means all public records, archives, documents and other historical matter of every kind, nature and description which are in the custody of any Government department or which may after the recommencement of the Act, be transferred to or acquired by the Public Record Office. /21

21. Public Records, according to the First Schedule to the U.K. Public Records Act, are:

> departmental records belonging to Her Majesty,... and in particular
> (a) records of, or held in, any department of Her Majesty's Government in the United Kingdom, or
> (b) records of any office, commission or other body or establishment, whatsoever under Her Majesty's Government in the United Kingdom. /22

The meaning is that to be public records the documents must be created in ('records of') or in the custody of ('held by') Her Majesty's Government and must belong to the Crown. The latter is overriding. This way of drafting has the effect of excluding records of public corporations and many quasi-government agencies which have the status of a corporate body. It means also that records created by government depart-

ments and which belong to Her Majesty's Government remain prima facie public records if they stray into private custody./[23]

22. The Israeli legislation considers archival material to be all documents "which are in the possession of any of the institutions of the State, or a local authority,except material which has no source value", and those documents

> which are situated anywhere and which are relevant to the study of the past, the people, the State or society or associated with the memory or activities of persons of note./[24].

23. A third method of defining records /archives is to enumerate different kinds of documents that are considered to be records. The legislation of Guatemala applies to " documentos historicos", which are

1. Those drawn up by civil, military, religious or municipal authorities, be it originals, copies, drafts or photocopies, whether signed or not which are of public interest;
2. seals, treatises, registers or books comprising the activities of public offices having formed part of the state and being over 50 years old;
3. maps, topographical plans and geographical maps, nautical and aerial charts, complete or partial, of the territory of the Republic which are over 50 years old;
4. periodical publications, parchments, diplomas, treatises, private letters, autobiographies and correspondence that can elucidate national and Centralamerican history;
5. photographs drawings, paintings, codices, etches,. and printed matter connected with important historical events of the nation itself or of Central America, that hold aspects peculiar to the isthmus or which describe Centralamerican personalities;
6. printed matter that is to be preserved for the essential knowledge of Centralamerican history;
7. documents from foreign countries that have a bearing on the history of Central America. /[25]

24. The Federal Archives of Switzerland are the central repository for "all the records with permanent value" of the federal agencies. This artide has been elaborated in regulations through an enumeration of documents :

- acts, e.g. treatises, notarial instruments,
- acts, consequently "the proper writing work" (correspondence, messages, minutes, advices, notes a.o.) and the complementing visual material (maps, charts, sketches, films, photo's, posters etc.),
  sound recordings(gramophone records, phonotapes) and printed matter (books, newspapers, periodicals, pamphlets etc.)
- registers and card indexes, whereby are to be understood : registry finding aids as filing plans, file inventories, indexes,
  other registers and card indexes, namely other records created by registration, e.g. .... /26

Conclusion

25. In summary, definitions of records/archives in current legislation vary widely, depending upon suppositions. There are laws which - at least in the definitions - encompass both public and private records/archives. Legislation may distinguish between records and archives. Only those definitions which include the essential quality of records as products of the transaction of business (provenance), seem to be acceptable in modern archival science. Such a definition may but need not, include the criterion of the evidential and informational value, rooted in US and Canadian archival theory.
The definition of records/archives should be valid regardless of form or medium. An enumeration in the definition of possible forms tends to become obsolete when technology develops new media./27
An enumeration of different kinds of documents that are considered to be records/archives could illustrate, but not replace a proper legal definition.

FOOTNOTES TO CHAPTER 1.1

1. International Glossary of Archival Terminology, nr. 387 (1).
2. Based upon International Glossary of Archival Terminology, nr. 33 (1).
3. France (Archivum, vol. 28, pp. 199-100): archives courantes, archives intermédiaires, archives définitives.
   Hungary (information provided by J. Molnár, Head of Department for the Archives of the Ministry of Culture and Education) : irratár

(current archives), levéltár (historical archives).
Indonesia (Archivum, vol. 20, p. 171 and author's experience) : arsip dinamis (current operating archives), arsip statis (static archives).
Yugoslavia: Archivum, vol. 19, p. 198.
The Draft Federal Archives Law of the Federal Republic of Germany distinguishes between Unterlagen (records) and Archivgut (archives).

See further : E. LODOLINI, "Archivio" : un concetto controverso nella dottrina e nelle leggi, Rassegna degli Archivi di Stato, vol. 40 (1980) pp. 9-45.

4. International Glossary of Archival Terminology, nr. 387 (1).
5. Archivum, vol. 28, p. 423.
6. Archivum, vol. 19, p. 200 (author's translation).
7. Archivum, vol. 17, p. 224 (author's translation).
8. Archivum, vol. 17, p. 227 (author's translation).
9. Archivum, vol. 28, p. 113.
10. Archivum, vol. 20, p. 209 and p. 227.
11. Archivum, vol. 28, p. 191(author's translation).
12. Archivum, vol. 20, p. 69.
13. Archivum, vol. 20, p. 171.
14. Archivum, vol. 19, p. 52 (author's translation).
15. Archivum, vol. 28, p. 431 (author's translation).
16. Archivum, vol. 28, p. 53.
17. In US and Canadian usage the term "manuscripts" is also used for documents received from non-official sources or for records/archives created by individuals.
18. Carbone-Guêze, Draft model law, p. 125.
19. Archivum, vol. 28, p. 339 (author's translation).
20. Archivum, vol. 28, p. 341 (author's translation).
21. Archivum, vol. 28, p. 58.
22. Archivum, vol. 17, pp. 189-190.
23. Information provided by A.W. Mabbs, formerly Keeper of Public Records (United Kingdom).
24. Archivum, vol. 20, p. 184.
25. Archivum, vol. 21, pp. 126-127.
26. Archivum, vol. 19, p. 197 (author's translation)
27. EVANS, Cyprus, paragraph 3.9.

1.2 Definition of public records and archives.

26. As has been noted above, some definitions of records/archives in current legislation do not make a distinction between public and private records. In that case a further elaboration of the scope of public bodies may be necessary. But such an elaboration may also be included in legislation and regulations when the law contains a definition of public records only.
Current legislation tends to define public records/archives by reference
(i) to the origin of the records/archives, for example, records which have been created in, or received by, any public office) /[1], or
(ii) to ownership/custody (for example, records/archives which are the property of the State or of government) /[2].
In legislation of both types, public bodies are either
(a) generally defined, with or without examples, or
(b) generally defined with a provision for application of the general definition to specific institutions, or
(c) enumerated.

27. In the legislation of a number of countries public records/archives are defined by reference to their origin, e.g. Cameroon, Canada, Fiji, Hungary, Indonesia, Lesotho, Malaysia, Netherlands, New Zealand, Philippines, Puerto Rico, Sudan, United States, and Yugoslavia. In these countries the law contains a general, broad definition of public bodies, to quote the Malaysian law, "any department, commission, board, corporation agency, local authority, or any other office of the Government of the Federation or of any State... " /[3]
The Indonesian Archives Act applies to records of State institutes and governmental bodies. The official explanation of the act indicates that State institutes are those stipulated in the 1945 Constitution, and that by "government bodies" are meant

> (a) all Government apparatus, including business enterprises the capital of which partially or wholly originates from the Government; and
> (b) Government bodies which are to be or have been merged at the time when this Act was proclaimed ./[4]

A comparable provision regarding dissolved institutions is given in the U.K. legislation and in the Dutch Archives Act:

> Public bodies shall include :
> (a) their staff, together with public services, enterprises and institutions and their repective staff;
> (b) public bodies dissolved before or after the entry into force of this Act./5

28. The second solution (definition of public records by reference to ownership/custody)can be found in the legislation of e.g. Belgium, Egypt, Gambia, Ghana, Israel, Mauritius, Nigeria, Rhodesia,Sierra Leone, Spain, United Kingdom, Zambia.

29. The status of public bodies may change and new bodies may be established whose public status is uncertain. Legislation with a general definition of public bodies provides for extension of statutory control to other bodies. In the legislation of Singapore the term "public office" includes "any other body as the President may, by notification in the Gazette, declare to be a public office". /6 A comparable system prevails in Botswana, Israel, Malaysia, New Zealand, United Kingdom and Victoria (Australia).

30. The legislation of Chili, Panama and Switzerland, however, enumerates the public bodies, thus constituting examples of the third type. In Kenya and Tanzania this is done in a schedule to the Archives Act. In Greece the law also enumerates the public archives :

> (a) the documents produced by the emperors of Byzantium ...(f) the archives of cities and municipalities ... (i) the archives of public establishments. /7

31. Sometimes records of specific bodies are excluded, e.g., in Great Britain - "records in any museum or gallery mentioned in the said Table which form part of its permanent collections" /8 - and in Kenya - "the records of the Public Trustee or the Registrar-General relating to individual trusts or estates" /9 (See also paragraph 129)

Conclusion 32. If legislation defines public records/archives only, an indication of the range of public bodies falling under the law does not seem

necessary; (except to define the status of parastatal bodies (if otherwise not defined). Legislation with a definition of both private and public record/archives, however, needs to be elaborated to make clear to which bodies the law applies. Provisions regarding dissolved institutions and making it possible to extend statutory control to new public bodies may be useful.

FOOTNOTES TO CHAPTER 1.2

1. NATIS Guideline, paragraph 127.
2. See also chapter 1.1, paragraph 21.
3. Archivum, vol. 20, p. 109.
4. Archivum, vol. 20, p. 174.
5. Archivum, vol. 19, p. 52 (English translation from Nederlands Archievenblad, vol. 75 (1971) p.2).
6. Archivum, vol. 20, p. 227.
7. Archivum, vol. 17, p. 213 (author's translation)
8. Archivum, vol. 17, p. 190.
9. Archivum, vol. 20, p. 67.

1.3 Inalienability and imprescribility of public archives.

33. Inalienability may be defined as the quality of public archives deriving from their relationship to the sovereignty of a state or the legal authority of any other body, which prevents their removal or abandonment or the transfer of ownership contrary to law. /[1] Imprescribility is the concept that public archives, which are inalienable, remain subject to replevin without limitation of time. /[2] Because of these qualities of archives, the state has the right to recover public archives which have gone astray (right of replevin)/[3].

34. In most legislation the imprescribility and inalienability of public archives result from the fact that public archives belong to the public domain or state patrimony.

35. The legislation of the Dominican Republic, the German Democratic Republic, Italy, Senegal, Turkey and Zaire declares public archives to be a part of the public domain and therefore inalienable. According to the French law public archives are imprescrible. Public archives are explicity declared inalienable in the legislation of Bulgaria and Hungary. The legislation of Ivory Coast and Mauretania declare public archives to be both imprescrible and inalienable. The legislation of Algeria, the Dominican Republic, Finland, France and Denmark, give the state an explicit right of replevin. In Fiji, Malaysia and New-Zealand, the law prescribles that, where any public archive or public record is in the possession of any person other than a government office, "that person shall, on demand in writing by the Chief Archivist, deposit that public archives or public record in the National Archives". /[4] The Supreme Court of New Brunswick (Canada) may make an order requiring the person wrongfully withholding public records to deliver them to the proper custodian. Finally, in some countries the law enables the government to seize the papers of deceased or dismissed ministers and senior civil servants, but this is seldom fully implemented, because a certain amount of confusion between their private correspondence and official papers is inevitable /[5]. In Indonesia a person who deliberately and illegally is in possession of public archives, can be sentenced to prison for a maximum

of ten years.

36. In the Netherlands:

> any person possessing public records shall transmit them to the responsible public body ... within four weeks of receiving notification to do so by registered letter, as to enable the body concerned to make photographic reproductions of them; transmission shall be at the expense and risk of the public body. The public body shall return the records to the sender within a month of their receipt, even if it has a claim on them for other reasons. /6.

In Victoria (Australia) the Governor of Council, upon the recommendation of the Public Records Advisory Council, may declare a record to be a "prescribed record" if he is satisfied that it would be a public record but for the fact that it is beneficially owned by a private person or body. The owner may be required to produce the prescribed record at the Public Record Office for copying. He may be given any directions in relation to the safekeeping of the record that the Director of the PRO considers necessary. Upon the death of the owner of a prescribed record the record becomes property of the State; a compensation is paid to the estate of the deceased owner.

Conclusion

37. In countries where the legal system for public property in general provides for the inalienability and imprescribility of public archives, it seems to be superfluous, strictly spoken, to include specific provisions in the archival legislation. A special arrangement for reproduction of public archives which have gone astray may be useful.

FOOTNOTES TO CHAPTER 1.3

1. International Glossary of Archival Terminology, nr. 233.
2. International Glossary of Archival Terminology, nr. 232.
3. International Glossary of Archival Terminology, nr. 409.
4. Archivum, vol. 20, p. 210 and vol.21, pp.202 and 209.
5. Duchein, Legislative foundations, p. 39.
6. Archivum, vol. 19, pp. 52-53 (author's translation).

1.4 Legislation/regulations regarding non-public archives.

38. Private records/archives may be defined as records/archives of non-governmental agencies, institutions and organizations and/or of non-governmental provenance. /[1] In most countries they include personal papers, family and estate archives, business archives, church archives, etc. In socialist countries the scope of private archives is more limited than elsewhere.

39. Most of the current legislation solely applies to public records. These laws may, however, also encompass records of private persons and bodies to the following extent :

(a) private archives may be donated or deposited to or purchased by the archival agency; after donation, deposit or purchase they are usually governed by the same rules as public archives;

(b) private archives (in private hands) may be subject to protective regulations, applicable either (i) to all private archives or (ii) only to private archives which have been classified. By classification is meant a registration of private archives as being of public interest. These protective regulations, in ascending progression of state control, may provide for :

- the compilation by the state of a register of private archives;
- the prohibition of exportation of private archives;
- the right of the State to preferential purchase of private archives;
- the National Archives to have a general authority to take any measure to protect private archives;
- the right of expropriation of private archives.

40. As an exception to the prevailing rule that archival legislation "cannot effectively put private archives under the same degree of protection and control as can be applied to public archives", /[3] the law of Zaire considers both public and private archives as part of the archival patrimony. Private bodies and individuals who keep archives which are more than 30 years old have to declare them to the National Archives. If the private archives are considered to be of historical interest they can be expropriated. This system

is modelled after the draft model law of Carbone and Guêze, which in turn resembles the Italian legislation (see paragraph 48). In Romania the National Archival Fonds comprises both state and privately owned archives. The same applies to Yugoslavia. In other socialist countries, like Hungary, private archives may become part of the National Archival Fonds by a procedure which is comparable to the classification of private archives described below.

41. Nearly all legislation authorizes the National Archives to buy and to accept bequests, gifts, and diposits of private documents and other material supplementing the public archives. For example, the Director of the National Archives of Zambia has the right :
"to acquire by purchase, donation, bequest or otherwise any document, book or other material which in the opinion of the Director is or is likely to be of enduring or historical value" /4. The federal legislation of the United States limits this to "papers of government offials and other papers relating to and contemporary with a President or former President of the United States" and"documents from private sources that are appropriate for preservation by the Government as evidence of its organization, functions, police , decisions procedures and transactions". /5
In Bulgaria the purchase price of private archives and documents is determined by special archives valuation commissions. Donors or legators of private archives are exempted from death duties and other taxes in Argentina, the Dominican Republic, France, Tasmania (Australia), and New South Wales (Australia). In France and the United Kingdom private archives may be accepted in lieu of tax payments. In some countries (e.g. Canada) the value of a gift of private archives to the government may be used to reduce taxable income.

42. To avoid any conflict of interests, archivists in Graubünden (Switzerland) and Greece are forbidden to buy or trade in documents. The Dutch State Archives and the Lebanese National Archives do not permit their personnel to collect archives privately without permission.

43. Among the functions of most archivists is the responsibility to ensure the proper preservation of private archives, or at least those

considered to be of prime interest. Provision for a national register of archives of non-public provenance (and documentary collections) that have sufficient research value - but without consequences for the owner - exists in Brazil, Israel, Lebanon, Mexico, Netherlands, United Kingdom.

44. In other countries owners of private archives are obliged by law to take proper care of their archives. In Czechoslovakia, for example,

> The owner of any archival document which is not in socialist social ownership and is not deposited in Archives shall be obliged to take proper care of it and make it possible for an official of the Archives in the files of which the document is registered to verify such care on the spot. In order to prevent any jeopardy to the preservation of such an archival document, the owner shall be obliged to take all necessary measures, as recommended by the Archives concerned, to save it. If he fails to do so, he may be charged by decision of the Ministry of the Interior to hand the archival document over for custody, free of charge, for a necessary period of time, to the Archives that the Ministry designates at the same time.
> The owner of an archival document shall be obliged to notify to the Archives in which it is registered all relevant data, including a charge of ownership /6.

In Portugal a special law protects archives of enterprises which by their age, economical interest, or political value have exercised a notable influence. These archives are declared inalienable; they may not be exported. The business firms concerned are responsible for the safekeeping of these archives. The State Archivist of Israel may require of any person information concerning archival material owned or possessed by him. Inspection or reproduction of private archives is only allowed with permission of the owner or the owner of the copyright and in accordance with conditions agreed upon by the State Archivist and the owner of the material. In Finland private archives with a great historical interest may not be destroyed or donated without prior information to the National Archives. The National Archives have the right to make copies of the material or to buy the private archives. In Bulgaria documents acquired by citizens by legacy, by donation, by will or another way, shall be declared before the bodies of the State Archival Fonds. In case of danger of destroying, dispersing or exportation these documents can be docketed with the sanction of the prosecutor's office and left to be kept by the legatees. If they lack suitable conditions for their

preservation, then the archival bodies shall take them to be kept in their repositories until their purchase or expropriation. The Ministry of the Interior of the German Democratic Republic may take measures to safeguard private archives in cases when they are endangered. In Hungary every owner or possessor of private archives is compelled to preserve their integrity and to keep them in a consultable state, but this does not apply to archives which concern their posessor or which he has created in his personal activity. In Peru any transfer of title (except bequest) to a private archive has to be consented to by the National Archives.

45. In a number of countries the State has a right to preferential purchase of private archives: Czechoslovakia, German Democratic Republic, Finland, France, Italy, Peru, Portugal, Senegal, USSR, Yugoslavia and Zaire. Sworn auctioneers in Mauritius are required to notify the Chief Archivist of any proposed sale of archival material. Comparable provisions exist in Argentina, Costa Rica, France, Guatemala and Italy.

46. The legislation of many countries either prohibits or imposes some controls on the export of archives (in the Bahamas, Malaysia, Singapore, New South Wales and Tasmania this prohibition is restricted to public archives) sometimes in the framework of legislation concerning cultural property in general. /[7] In some countries a licence for exportation may be given. In Bulgaria export of private archives is allowed, provided an inventory is submitted to and verified by the Archives. The Israelian State Archivist is authorized to inspect, photograph or copy and to register private archives destined for export, but he can not prevent exportation. Likewise, the National Archives in Venezuela can not prevent export of private archives, but the documents may be bought or copied by the National Archives.

47. In a number of countries only those private archives that have been classified and registered are subject to protective measures. In France private archives which are of public interest because of their historical value can be classified as "historical archives" by the Minister of Culture on the proposal of the National Archives.

This classification does not affect the ownership, but henceforth the owner is not allowed to destroy, change , or alienate his archives without approval of the National Archives. The owner is given an indemnity. When he intends to export the archives, the National Archives have the right to either copy the archives or to buy them at the price fixed by the exporter. Exportation of private archives not classified has to be authorized by the Minister of Culture, who may buy them at the price fixed by the exporter. Comparable provisions are found in the legislation of Algeria Bulgaria, Botswana, the Dominican Republic, the federal Republic of Germany (e.g. Baden-Württemberg, Bavaria), the German Democratic Republic, Greece, Hungary, Malawi, Netherlands, Poland, Portugal, Romania, San Marino and Spain.

48. In Italy /[8] every holder of private documents more than 70 years old is obliged to declare these documents to the archival inspectorate and the provincial prefect. The archival inspectorate may declare the documents as being of major interest(with the possibility of appeal to the Minister of the Interior). The holder of documents or archives declared to be of major interest is obliged :

a) to preserve, classify, arrange and inventory these archives and documents; a copy of the inventory has to be transmitted to the archival inspectorate. Disarrangement of the archives is forbidden;
b) to permit researchers to consult the documents, unless the documents have been recognized by the inspectorate as being of a secret nature;
c) to communicate within 30 days to the archival inspectorate loss or destruction of documents or their transfer to another place;
d) to repair any deteriorated document or permit the archival inspectorate to arrange for restoration;
e) to refrain from transferring the ownership, tenure or possession of documents, without notice to the archival inspectorate;
f) to refrain from exportation of the documents without authorization by the archival inspectorate;
g) to permit inspection by the archival inspectorate to ensure that all obligations are fulfilled.

If the owner fails to comply with these obligations, the ultimate

sanction may be mandatory transfer of the documents to the State Archives. In this case Carbone and Guêze, who followed the Italian regulations in their draft model law, propose even expropriation./[9] The Algerian law follows the Italian model.

49. In Greece all private collections of manuscripts and historical documents have to be declared to the Ministry of Education and the National Archives. If this declaration is not made within three months after the entering into effect of the archival law, or within one month after their acquisition, the documents may be confiscated. In Bulgaria private archives which are of value to the State or the society and which are in danger of being destroyed or taken outside the country can be expropriated after the death of their creators. Expropriation as a sanction for neglect of custody of private archives exists in San Marino. The archival laws of Italy and Zaire open the possibility of expropriation for the public cause of documents which have a historical value.

Conclusion 50. The tendency in current legislation is to impose some control by the archival authorities on private archives, at least on those which are of main general interest. The extent to which this control can be effected will vary from country to country. A too rigid control - apart from its feasibility - may lead to concealment and even destruction of private archives. Owners should be encouraged to deposit or to donate their material to public archival instructions. In many cases the archival institution could suffice with making a reproduction of the privately owned archives. It should be emphasized that National legislation in accordance with the UNESCO Convention of 1970 would make it possible to prevent the illicit export of archives.

FOOTNOTES TO CHAPTER 1.4

1. International Glossary of Archival Terminology, nr. 273.
2. International Glossary of Archival Terminology, nrs. 215,130.
3. NATIS Guideline, paragraph 158.
4. Archivum, vol. 20, p. 148.
5. Archivum, vol. 21, p. 87.
6. Archivum, vol. 28. p. 115.
7. See B. Burham, The protection of cultural property. Handbook of national legislations (The International Council of Museums, 1974). See also the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, adopted by the General Conference of Unesco, 1970.
8. Archivum, vol. 19, pp. 25-27.
9. Carbone-Guêze, Draft Model Law, p. 203.

1.5 Functions and organization of public archives services.

51. An archives service or agency may be defined as an institution responsible for the acquisition, preservation and communication of archives. /[1] Within the administrative organization of public archives (see chapter 1.6) there may be central archives, regional archives and local archives, besides specialized archival institutions. It is outside the scope of the present study to analyse in detail the functions of all these categories of archives services. Therefore, the analysis is limited to the functions of the archives service responsible for archives of a national government, frequently called the National or Federal or Central Archives, which generally serve as a model for the other archives. An analysis of the functions or National Archives may thus assist in understanding the functions of other public archives services.

52. In most legislation the main functions of the National Archives are either summarized in broad and comprehensive language, or are enumerated. A shorter description of functions may be elaborated in more detail in a decree or in regulations executing the law. The functions and responsibilities of the National Archives are sometimes formulated as functions and responsibilities of the Minister or other government authority (see chapter 1.7), who may delegate his powers to the National Archivist. In most cases, however, these functions are formulated as functions of the National Archives or of the National Archivist.

53. An example of very comprehensive circumscription of the National Archives' functions is the French legislation which states that :

> The National Archives keep, appraise, arrange, describe and communicate :
> a) the documents created by central institutions of the State, since the origins of the French Nation;
> b) the documents created by services, establishments and public organizations whose competences extend or have extended over the whole French territory;
> c) all other documents which are assigned or transferred to the National Archives, temporarily or definitively. /[3]

The Graubünden (Switzerland) law states :

> The State Archives serve the safeguarding, preservation and communication of the documentation to the history of Graubünden as well as the records management of all essential records of the canton to safeguard its rights and interests. /4

Other examples of a comprehensive statement of the functions of the National Archives are given in the laws of Gabon and Mauritius. /5 Somewhat more elaborate are the laws of Czechoslovakia and Iceland. /6

54. A succinct description of the mission of the Archives is given in the USSR legislation :

> The State Archives Service of the USSR is charged with the constitution of fonds, the registration of the state, the preservation and the organization of the usage of the documents belonging to the State Archival Fonds of the USSR. /7

This is elaborated in a very detailed enumeration of functions and responsibilities of the General Directorate at the Council of Ministers. /8 The Finnish archival law of 1939 describesthe functions of the National Archives as follows:

> They are responsible for the acquisition, preservation and arrangement of archives, their communication to the authorities, researchers and other people who wish to consult the archives and lastly to control and direct the archival activities in general. /9

In a decree of 1952 each of the basic missions of the Finnish National Archives have been elaborated through enumerations of the different functions./10

55. The description of the functions of the National Archives of the Bahamas, Gambia, Ghana, Nigeria and Sierra Leone are all of the same model. The Archivist of the Bahamas, for example, is :

> responsible for the custody, preservation, arrangement, repair and rehabilitation, and for such duplication and reproduction of records maintained at the Public Records Office as may be necessary or appropriate, including the preparation and publication of inventories, indexes, catalogues and other finding aids or guides facilitating the use of such records. /11

This may very well be a summary of the assignment of the Keeper of the Public Record Office (United Kingdom) who has :

power to do all such things as appear to him necessary or expedient for maintaining the utility of the Public Record Office and may in particular :

a) compile and make available indexes and guides to, and calendars and texts of, the records in the Public Record Office;
b) prepare publications concerning the activities of and facilities provided by the Public Record Office;
c) regulate the conditions under which members of the public may inspect public and other records or use the other facilities of the Public Record Office;
d) provide for the making and authentication of copies of and extracts from records required as evidence in legal proceedings or for other purposes;
e) accept responsibility for the safe keeping of records other than public records;
f) make arrangements for the separate housing of films and other records which have to be kept under special conditions;
g) lend records, in a case where the Lord Chancellor gives his approval, for display at commemorative exhibitions or for other special purposes;
h) acquire records and accept gifts and loans. /[12]

Provisions comparable to those for the Public Record Office (United Kingdom) are found in the legislation of Botswana, Cyprus, Kenya, Malawi, Tanzania and Victoria (Australia), but in a more elaborate form./[13]

56. A very detailed enumeration of the functions of a National Archives is given by Carbone and Guêze in their draft model law (followed in the Algerian law). /[14] Such enumerations of the functions of the National Archives exist in the legislation of Argentina (which was followed by Uruguay /[15]), Australia, Basel (Switzerland), Brasil, Costa Rica, the Dominican Republic, Egypt, Guatemala, Hungary, Lebanon, Liechtenstein, Malawi, Malaysia, Mexico, New Brunswick (Canada), Portugal, Puerto Rico, Singapore, Spain, Sri Lanka, Switzerland, and Vietnam. To cite the Australian archives bill :

The functions of the Australian Archives are, subject to this Act

a) to ensure the conservation and preservation of the existing and future archival resources of the Commonwealth;
b) to encourage and foster the preservation of all other archival resources relating to Australia;
c) to promote by providing advice and other assistance to Commonwealth institutions the keeping of Current Commonwealth records in an efficient and economical manner and in a manner that will facilitate their use as part of the archival resources of Commonwealth;
d) to ascertain the material that constitutes the archival resources of the Commonwealth;
e) to have the custody and management of Commonwealth records

other than current Commonwealth records, that
(i) are part of the archival resources of the Commonwealth;
(ii) ought to be examined to ascertain whether they are part of those archival resources; or
(iii) although they are not part of those resources are required to be permanently or temporarily preserved;

f) to seek to obtain, and to have the custody and management of, material (including Commonwealth records) not in the custody of a Commonwealth institution, that forms part of the archival recources of the Commonwealth and, in the opinion of the Director-General, ought to be in the custody of the Archives;

g) with the approval of the Minister, to accept and have the custody and management of material that, though not part of the archival resources of the Commonwealth, forms part of archival resources relating to Australia and, in the opinion of the Minister ought to be in the custody of the Archives in order to ensure its preservation or for any other reason;

h) to encourage, facilitate, publicise and sponsor the use of archival material;

j) to make Commonwealth records available for public access in accordance with this Act and to take part in arrangements for other access to Commonwealth records;

k) to conduct research, and provide advice, in relation to the management and preservation of records and other archival material;

l) to develop and foster the co-ordination of activities relating to the preservation and use of the archival resources of the Commonwealth and other resources relating to Australia; and

m) with the approval of the Minister, and in accordance with arrangements made with a person responsible for exempt material, to perform any of the foregoing functions in relation to that material as if that material formed part of the archival resources of the Commonwealth.

The Archives may do all things that are necessary or convenient in connection with the performance of its functions, and in particular,without limiting the generality of the foregoing, may:

a) establish and control repositories or other facilities to house or exhibit material of the Archives and in association with a State, the Northern Territory or other person control repositories or other facilities in which material of the Archives is housed or exhibited;

b) undertake the survey, appraisal, accessioning, arrangement, description and indexing of Commonwealth records;

c) make arrangements for the acquisition by the Commonwealth of, or of copyright in relation to, or arrangements relating to the custody of, material that forms part of the archival resources of the Commonwealth;

d) chronicle and record matters relating to the structure and functioning of Commonwealth institutions or other matters of archival significance and make records for the purpose of adding to the archival resources of the Commonwealth;

e) make copies, by microfilming or otherwise, of archival material but not so as to infringe copyright (other than copyright owned by the Commonwealth) subsisting in the material;
f) arrange for the publication of material forming part of the archival resources of the Commonwealth or works based on such material, but not so as to infringe (other than copyright owned by the Commonwealth) subsisting in the material or works;
g) publish indexes of, and other guides to, archival material;
h) authorize the disposal or destruction of Commonwealth records;
j) on request, assist Commonwealth institutions in the training of persons responsible for the keeping of current Commonwealth records;
k) train, or assist in the training of, persons, other than persons responsible for the keeping of current Commonwealth records, for work in connection with records and other archival material;
l) obtain and maintain equipment for use in retrieving, or otherwise obtaining, information from records; and
m) provide information and facilities for persons using the material of the Archives.

57. In many countries the legislation contains a specific provision for a seal of the National Archives. For example, in Botswana

1) There shall be an official seal of the National Archives of a design approved by the Minister.
2) The seal of the National Archives shall be kept in the custody of the Director and may be used for the purposes of the National Archives and for the purposes of any place of deposit for which no separate seal is provided.
3) The Minister may approve an official seal for the purposes of any place of deposit and any such seal shall be kept in the custody of the custodian of the public archives in such place.
4) The official seal of the National Archives and any seal provided under this Act for the purposes of any place of deposit shall be judicially noticed. /16.

Comparable provisions exist in Kenya, Malawi, Tanzania and Zambia.

58. Some of the actions to be taken in respect to public records in government departments and public archives in the National Archives may require formal authority /[17] . Legislation may vest either the National Archives or the Minister or the National Archives Administration with such authority. In most legislation the director of the National Archives Administration, under the overall political responsibility of the Minister (see chapter 1.7), has this authority. In some countries however, legislation declares the Minister himself formally res-

ponsible for keeping public records, the director of the National Archives being literally a manus ministrae with a delegated authority. Examples are: Czechoslovakia, Ireland, Japan, Jamaica, Philippines, Sudan, United Kingdom and, most strikingly, the United States, where the Administrator of General Services is responsible for the custody, use and withdrawal of records transferred to him (that is: to the National Archives).

59. With regard to the internal organization of archives services, an analysis of existing legislation is difficult, since this subject has been excluded from publication in Archivum. Furthermore in most countries the organization of an agency is provided for in regulations rather than in the law. /[18] However, the legislation of Algeria, Brasil, Chili, Colombia, Japan, Laos, Mexico and Rwanda give some details on the structure of the National Archives, like the division into sections, their functions etc. Evidently, there is no general model, which could or should be copied.

60. Regulations are also the appropriate place for provisions regarding, for example, a special trust fund, a historical publications commission linked to the Archives, etc.

Conclusion 61. In most archival laws the mission and the main functions of the National Archives are stated. A detailed enumeration of the functions, responsibilities and authorities of the National Archives runs the risk of a limitative interpretation. To provide for flexibility, a general clause making it possible to assign other, new functions would be useful./[19] Current legislation provides the National Archives with a certain amount of independence under the overall constitutional responsibility of the Minister. This seems to be true also when legislation formally assigns archival functions to the Minister.

FOOTNOTES TO CHAPTER I.5

1. International Glossary of Archival Terminology, nr. 33(2).
2. International Glossary of Archival Terminology, nrs. 68 and 311.
3. Archivum, vol. 28, p. 201 (author's translation).

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4. Archivum, vol. 28, p. 358 (author's translation).
5. Archivum, vol. 20, pp. 51 and 84.
6. Archivum, vol. 28, p.340 (author's translation).
8. Archivum, vol. 28, pp. 347-352.
9. Archivum, vol. 17, pp. 123 (author's translation).
10. Archivum, vol. 17, pp. 132-134.
11. Archivum, vol. 28. pp. 58-59.
12. Archivum, vol. 17, p. 185.
13. See also the instructions for the Swedish National Archives: Archivum vol. 28, pp. 378-382.
14. Carbone-Guêze, Draft model law, pp. 126-127 and Archivum, vol.28, pp. 33-35.
15. Archivum, vol. 21, pp. 17-19 and 170-171. In a presidential decree 2866/1977 the missions and functions of the general directorate and the different departments of the National Archives of Argentina are enumerated in detail (information provided by L. Rosaria Mendez, Jefe del Departemento Difusión, Archivo General de la Nación, Buenos Aires).
16. Archivum, vol. 28, p. 76.
17. NAIIS Guideline, paragraph 151.
18. The most recent regulations for the National Archives of France, dating from 1911, have practically fallen into abeyance. The internal organization is regulated by simple "notes of service" issued by the Director General. The archives in the French départements (provinces) are provided with regulations from 1921updated regularly and with circular letters from the Director General. See : Réglement général des Archives départementales, édition annotée et commentée à jour au 1er janvier 1964 (Paris , Direction des Archives de France, 1964, 51 p.); Lois, décrets, arrêtes, réglements et instructions concernant le service des archives départementales (Paris - Melun, Direction des Archives de France, 1931, 293 p.); Lois, décrets, arrêtés, ordonnances, circulaires et instructions concernant les Services départementaux d'archives, 1930-1957 (Paris, Direction des Archives de France, 1958, 366 p.) (Information provided by M. Duchein,Inspecteur général des Archives de France, Paris).

19. The Draft Archives law of the Federal Republic of Germany states that the Federal Government may assign to the Federal Archives other federal functions then those specified in the archives law, if they are consistent with the federal archival system or with research in German history (information provided by H. Booms, Präsident des Bundesarchivs, Koblenz).

1.6 National archives system.

62. The analysis of the function of public archives services (see chapter 1.5) centered around the National Archives. But legislation should also consider the need for a national system, in which, apart from the National Archives, public archives services exist at the subordinate levels of government, provincial, municipal, etc. In addition to the public archives services linked to levels of government, there may also exist special archival institutions. These may be restricted to holdings transferred by one government agency (for instance, archives of a Parliament or of a Foreign or Defence Ministry), or by a number of similar types of public or private institutions (e.g., chambers of commerce, trade unions, business firms, ecclesiastic institutions, academies of sciences, hospitals, universities, political parties, families, etc). A special archival institution may be restricted to holdings acquired on the basis of subject content or common physical form, like archives of literature and art, economic archives, audio-visual archives, motion picture or sound archives, machine-readable archives. A national archives system, in which all these types of archival institutions exist, calls for effective co-ordination, or at least for an authority responsible for the planning and implementation of a national archival policy.

63. In centralized countries the national archives system may be an integrated hierarchy of national, regional or provincial and municipal or local archives as well as special archives, all subordinate to a supreme archival authority. In non-centralized countries, the public archives services at the different levels are usually independent. However, in such countries there may exist a body for archieving co-ordination between the archival institutions. This supreme authority (in centralized and non-centralized systems) may be called the National Archives Administration. This may consist of :

(i) a directorate within the National Archives, under the control

of the National Archives;

(ii) a division of the Ministry responsible for public records and the National Archives;

(iii) a separate agency, commission, board or other suitable body capable of exercising executive and advisory powers.

64. Examples of countries with a centralized government, where a high degree of centralization exists are Finland, the German Democratic Republic, the USSR and other socialist countries, but also countries like Italy, Spain and Sweden. A non-centralized archives system exists not only in countries with a federal constitution (Brazil, Federal Republic of Germany, Switzerland, United States),but for example also in the United Kingdom. In addition, there are national archives systems with features of both a centralized and a decentralized system, like Belgium, France, the Netherlands. In view of this situation, more useful than an analysis of these archives systems - each rooted in the administrative system of a particular country - would be reference to Delmas' contribution to"Planning national infrastructures for documentation, libraries and archives". /[1]

65. Regarding the National Archives Administration, the second type (a division of the Ministry responsible for public records and the National Archives) can be found in the legislation of socialist countries like Bulgaria, Czechoslovakia, the German Democratic Republic, but also in Spain and Italy. In other countries, like the Netherlands, there is indeed a division within the Ministry which is formally responsible for the national archival policy, but which relies upon the National Archives to such a degree that the situation resembles the first option, in which the National Archives are responsible both for the management of the National Archives proper and for the national archives system.

66. The organization of the first type (a directorate within the National Archives) exists in most countries, evidently because in most developing and in developed countries the building of an archival network started with the establishment of National Archives rather than with development of a national archives administration.

67. A separate agency with executive and advisory powers as national archives administration (type iii) exists in the USSR. It is advocated by Carbone and Guêze. /[2]

68. In countries where it is constitutionally impossible to provide central direction, it should be possible"to achieve some measure of co-ordination by a suitable constituted Advisory Council, with no executive powers ..." /[3] Such an Advisory Council is treated below (chapter 1.8.)

Conclusion

69. Legislation regulating the network of a national archives system has to take into account the structure of the State, and the degree of autonomy enjoyed by authorities at subordinate levels of government. In nearly every country there will exist some form of archival infrastructure outside the central government, which cannot be ignored by new legislation. In many cases the development of a National Archives and of a records management system will be a prerequisite for the establishment of a national archives system. The results of two RAMP pilot projects for the establishment of a model regional archives and records centre in the Philippines /[4] and a national archives and records management system in Peru /[5] should assist other countries in developing a national archives system of their own.

FOOTNOTES TO CHAPTER 1.6

1. Delmas, Archives, pp. 249-253 (The structure of the national archives system) and pp. 268-302 (Machinery for formulating a national archives plan and procedures for its implementation).
2. Carbone and Guêze, Draft model law, pp. 24, 27.
3. NATIS Guideline, paragraph 161.
4. Ricks, Artel. Republic of the Philippines: RAMP pilot project for the establishment of a regional archives and records centre (FMR/PGI/81/158) Paris, Unesco, 1981. 49 p.
   Ricks, Artel. Philippines: RAMP Pilot Project for the Establisment of a Regional Archives and Records Centre (Report no.2) (FMR/PGI/82/161) Paris, Unesco, 1982. 24 p.

5. Cortés, Alonso, Vicenta. Perú: Sistema Nacional de Archivos y Gestión de Documentos: RAMP Proyecto Piloto (FMR/PGI/81/197) Paris, Unesco, 1981 24 p. available also in English.

1.7 Ministerial responsibility.

70. The archives (National Archives or National archives system) are usually placed under the authority of a supreme government authority, in most countries a Minister. This Minister may be vested with the general responsibility to execute the archival law and to supervise the archives services (see also chapter 1.5, paragraph 52). The governmental authority under which archives are placed differs from country to country; it may be the Minister of the Interior, or another Minister, or the President, or the Council of Ministers.

71. In Cameroon, Gabon, Lebanon and Rwanda, the National Archives are attached to the Presidency, in Laos and the USSR to the Council of Ministers, in Israel and Japan to the Prime Minister's Office, and in Tanzania to the Office of the second Vice-President. The National Archives of the United States form part of the General Services Administration, headed by the Administrator of General Services. The Minister of the Interior is responsible for archives in Argentina, Czechoslovakia, Federal Republic of Germany (Federal Archives), German Democratic Republic, Dominican Republic, Costa Rica, Geneva (Switzerland), Romania and Soudan. In the United Kingdom, the Public Record Office is under the Lord Chancellor, in Brazil,Cyprus,Jamaica and Peru under the Minister of Justice. The Minister of Culture is the responsible official in Denmark, most states of the Federal Republic of Germany (e.g. Bavaria, Hesse, Rhineland -Pfalz), France, Hungary, Iraq, Italy, Netherlands, Portugal, Quebec (Canada), Spain, and Zaire. In Belgium Chili, Graubünden (Switzerland), Greece, Iceland, Guatemala, Poland, Togo, Uruguay and Vietnam, the Minister who has Education in his portfolio, is responsible for the archives. In the Central African Republic, Mexico, and Senegal, the archives are attached to the Secretariat of the Government.

:lusion

72. This summary makes clear that no solution for the problem of organizational placement of the archival function is universally accepted. From a professional point of view, an archives service should be involved in records management activities of all government departments (see chapter 2.1), which might be more effectively performed with

the support of an official with a degree of inter-ministerial or supra-ministerial authority. However, personal and political circumstances may call for another solution. A basic consideration is that the Archives should be under the jurisdiction of an influential Minister, who can be approached directly by the head of the National Archives.

1.8 Advisory Body (Archives Council).

73. In the legislation of most countries there is provision for an Archives Council or similar body, to advise either (a) the competent Minister, Secretary of State, or the President, or (b) the director of the National Archives. According to their functions, these Councils may be divided into councils which control the functioning of the National Archives and those which have a broader advisory function in determining archival policy. Both types of Councils are advocated in the literature on archival legislation. The national Archives Council proposed by Carbone and Guêze /1 is " the principal organ of the archives administration" and "the mainspring of the Country's entire general archival activity". Such a Council really controls the archival administration. The Delmas model law /2 calls for a superior Archives Council, responsible for determining and planning archival policy.

74. A council to advise the director of the National Archives is provided for in the legislation of, for example, Algeria, Canada, Guatemala, Malaysia, Mexico, and Singapore. It may also exercise some supervision of the National Archives, e.g. in those cases where the director of the National Archives is obliged to consult the council on certain matters, as is the case with the Junta de gobierno of the Spanish National Archives. In other cases, however, a council supervising the National Archives reports to the responsible minister, as in Graubünden (Switzerland), San Marino and Venezuela (where the Councils have to inspect the Archives), and in Greece, Lesotho, Saskatchewan (Canada) and Sudan.

75. The Advisory Council proposed for the Australian archives is to advise both the Minister and the director-general of the Australian Archives. In the United Kingdom the Advisory Council on Public Records advised the Lord Chancellor

> on matters concerning public records in general and, in particular on those aspects of the work of the Public Record Office which affect members of the public who make use of the facilities provided by the Public Record Office. /3

A comparable function is assigned to the Councils in the Bahamas, Scotland, Sri Lanka, and Tanzania.

76. Sometimes the Council of Archives directs the archival service itself, as in Iraq, Libanon, the United States (Maryland, North Carolina and Wisconsin) and Switzerland (canton of Lucerne). The National Archives Council proposed by Carbone and Guêze /4 falls into this category.
The Swedish State Archival Board is a decision-making body, superior to the National Archivist. It has to decide on important questions of organization, appropriation proposals presented to Parliament, rules for work or service regulations, planning, appointments, and leave of absence for executive personnel.

77. The Vietnamese Conseil d'administration is supposed to study the report of the director of Archives and Libraries on the functioning of his directorate, and to make suggestions regarding the work programme and the budget of the directorate. The Yugoslavia Archives Council has to approve any general regulation governing the use of archives, to advise on the work programme and the development on the Archives, and to study the reports of the Archives.

The Algerian, Senegalese, Vietnamese, and Yugoslavian legislation provide for councils which have a rôle in the planning and programming of archival activities, the development of norms and standards, and other technical matters. In the Belgian, Czechoslovakian, Dutch and French legislation there is provision for a council that advises on all technical questions relating to archives. At the Polish general directorate of State Archives there is an Archives Council which not only develops the archival programme, but also advises on the rules for the distribution of archival documents within the country, for making of inventories, the programme for the arrangement and description of archives, etc. The Council may advise on the training and promotion of activities. In Panama the Junta Nacional de Documentación y Archivos has the task of elaborating general rules

for keeping, arrangement, description, appraisal and destruction of archives. The Archives Councils of other Latin American countries such as Brazil, Columbia and Puerto Rico have comparable functions.

78. The Archives Council in Senegal establishes every two years the priorities for finding aids, documentary publications and all out-reach activities of the National Archives.
The legislation of Brasil and Columbia specifically assigns terminological standardization to the Archives Council. Several councils give advice on documentary publications including those in Argentina, Greece and Lesotho. The comparable legislation of Gambia, Nigeria and Sierra Leone prescribes that the Archives Council supervises the publication of any records or lists or calendars of archives authorised by the Minister to be published. In these countries the Archives Council is also involved in the procedure for granting a licence for export of historical documents, this is also the case in Kenya, Portugal, and Spain (see chapter 1.4).

79. The rôle of the Archives Council in the appraisal and selection of records is very important. Some Councils give advice only on the procedure, but in many countries the Archives Council has a task in appraisal and selection itself. The Canadian Dominion Archivist may refer to the Advisory Council on Public Records (which he himself chairs)

> matters of policy and proposals for the destruction of records, whenever he considers that the experience of departments and the views of the academic community are specially relevant /5.

The Illinois (United States) State Records Commission has the duty

> to determine what records no longer have any administrative, legal, research, or historical value and should be destroyed or disposed or otherwise....
> No record shall be disposed of by any agency of the State, unless approval of the State Records Commission is first obtained....
> The Commission shall issue regulations ..... which shall be binding on all agencies. /6

All schedules have to be submitted to the Commission.

The Archivio General de Centroamérica in Guatemala may destroy documents having no historical or administrative value with the approval of the Consejo Consultivo and the previous authorisation of the Minister. The first function of the Iran National Archives Organization Council is to determine disposable redundant records and approve disposal schedules. A representative of the ministry or agency whose redundant records are currently under consideration by the Council, is to be invited to attend the appropriate Council meetings. The Israelian State Archivist, who is chairman of the Higher Archives Council, needs the permission of the other members for destruction of scheduled records. The Council has also to make a decision when someone opposes the destruction of any record (see chapter 2.4). The destruction of public records is one of the matters on which the Archives Councils of Cameroon, Gambia, Netherlands, Nigeria Rhodesia, Sierra Leone, Sudan, and Zambia have to advise the Minister.

80. The membership of the Archives Council generally reflects the users of the archives : high government officials and representatives of the academic community, but the Brazilian Archives Council has only members from the ministries and no academic representatives. In all countries the National Archivist is ex officio either a member of the Council or entitled to attend its meetings. In several countries (like Belgium, Brasil, Canada, Guatemala, Israel, Mauritius, Scotland, Singapore, Venezuela) the National Archivist is chairman of the Council, while in Iran, Puerto Rico and Sudan he is secretary to the Council.

81. A number of laws leave the composition of the Archives Council to the discretion of the appointing authority (Head of the State, Minister or National Archivist). Some legislation however, contains detailed provisions regarding the composition of the council, such as the French regulations, which lists some 16 ex officio members. In less detail the Canadian Public Records Order prescribes that the Advisory Council

on Public Records shall consist of the Dominion Archivist (chairman), nine members from government agencies and three members from outside the public service, representing the Canadian Historical Association, the Canadian Political Science Association and the Records Management Association of Ottawa. These nine members are appointed by the Treasury Board.

82. In some countries the law provides for members of the Archives Council to be nominated or proposed by universities or scientific academies e.g. in Guatemala, Italy, Nigeria, Panama, Puerto Rico, Saskatchewan (Canada), Senegal, Sierra Leone, Turkey. In Ghana the Archives Council includes also a representative of the non-government secondary schools, while the Nigerian Archives Council has members from each of the five universities, one member representing commercial interests, one representing missionary bodies, two persons versed in Arabic studies, and members nominated by the military governor of each state. A comparable representation of the states or provinces is provided for, in the Comisión Nacional de Archivos of Argentina. Besides members of the Archives Council representing users from the government and the universities, there may be representatives of genealogists and other non-academical researchers; this is the case in the Netherlands and in Guatemala. It seems advantageous to include in the Archives Council representatives of the national library and archival institutions outside the jurisdiction of the National Archives, as is the case in Israel, France, and Portugal. According to the regulation of the Archivio General de Centroamérica (Guatemale), the national archivists of the other Latinamerican countries are honorary member of the Consejo consultivo for the Archivio General de Centroamérica. Representation on the Archives Council of professional archival associations exists in France, Panama, and Senegal. Sometimes the personnel of the Archives is represented in the Archives Council, as in Belgium and France.

Conclusion 83. The concept of an Archives Council "to enlist the participation of producers and users of archives in the framing of archival policy" /7 is almost universally accepted. But the key issue whether the Council should be provided with executive powers has been dealt with differently. Too much power for the Council endangers the authority of the Archives and may even frustrate a fruitful development of a professionally and constitutionnaly responsible archival institution. On the other hand, National Archives without any outside sounding board risk a certain introvertion and isolation. The responsible Minister may feel the need for expert advice to counter-balance the professionally specialized National Archives. In many countries legislation has tried to solve these problems by assigning to the Archives Council not only an advisory function (to the Minister and/or the National Archivist), but by obliging the National Archivist also to consult the Archives Council on a number of specific matters, before reaching a decision. Most frequently, this applies to the appraisal and selection of records and archives. However, and especially in these matters, the final decision should be taken by the Archives and not by representatives of users /8.

FOOTNOTES TO CHAPTER 1.8

1. Carbone and Guêze, Draft model law, p. 50
2. Delmas, Archives, p. 307.
3. Archivum, vol. 17, p. 184.
4. Carbone and Guêze, Draft model law, pp. 49-52.
5. Archivum, vol. 21, p. 50.
6. Archivum, vol. 21, p. 100.
7. Delmas, Archives, p. 305.
8. Actes des dix-huitième en dix-neuvième conférence internationales de la Table Ronde des Archives, pp. 66-71.

2. RECORDS MANAGEMENT FUNCTIONS.

2.1 Records Management.

84. Records management may be defined as

> that area of general administrative management concerned with archieving economy and efficiency in the creation, maintenance and use, and the disposal of records, i.e. during their entire life cycle. /1

The broad concept of records management is treated in this chapter, while later chapters are devoted to, respectively, the right of inspection, records centres, appraisal, destruction, and transfer of records.

85. In only a few countries does the National Archives have statutory responsibility for the whole range of records management functions or the task of formulating standards for record systems and providing an advisory service. Elsewhere, these functions may be allocated to another agency, like a General Services Administration, or the ministry of the Interior, or the Central Secretariat of the State. More commonly, the pre-archival rôle of the National Archives is limited to those areas of records management which are more directly concerned with the exercise of some degree of control over appraisal. Most legislation contains some general provisions to ensure good records management. If the records management responsibility itself is regulated, it is mostly done through regulations, circular letters, etc.

86. In a number of countries special legislation is devoted to records management. The first example is the federal legislation of the United States, the only one which defines records management :

> the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition. /2

The Federal Records Management Act requires the establishment of standards and procedures to assure efficient and effective records management. The promulgation of these standards is the duty of the

Administrator of General Services. He has responsibility to

1) promote economy and efficiency in the selection and utilization of space, staff, equipment, and supplies for records management;
2) promulgate standards, procedures, and guidelines with respect to records management and records management studies;
3) conduct research with respect to the improvement of records management practices and programs;
4) serve as a clearinghouse for information with respect to records management and as central source for reference and training materials with respect to records management;
5) establish such interagency committees and boards as maybe necessary to provide an exchange of information among Federal agencies with respect to records management ;
6) disseminate information with respect to technological development in records management;
7) direct the continuing attention of Federal agencies and the Congress on the burden placed on the Federal Government by unnecessary paperwork, and on the need for adequate policies governing records creation, maintenance and use, and disposition;
8) conduct records management studies and, in his discretion, designate the heads of executive agencies to conduct records management studies with respect to establishing systems and techniques designed to save time and effort in records management, with particular attention given to standards and procedures governing records creation;
9) conduct inspections or records management studies which involve a review of the programmes and practices of more than one Federal agency and which examine interaction among and relationships between Federal agencies with respect to records and records management; and
10) report to the Congress and to the Director of the Office of Management and Budget each year, at such time or times as he may deem desirable, on the results of the foregoing activities, including evaluations of responses by Federal agencies to any recommendations resulting from studies or inspections conducted by him./3

In practice, these activities are carried out by the National Archives and Records Service, which is part of the General Services. Recently most of these duties and responsibilities were removed from the National Archives and Records Service and assigned to another service of the Administrator of General Services. Patterned after the United States federal legislation are the legislation of Liberia, the Philippines and Rhode Island (United States).

87. The General Archival Directorate of the USSR, i.a.,

e) assures, on the level of organization and methods, the functioning of the administrative archives /4 and the organization of the documents of the secretariats of the ministries, administrations, establishments, institutions and enterprises of the USSR;takes measures to perfect the functioning of the administrative archives and organizes non-administrative examinations for the secretarial administration and the functioning of administrative archives; organizes by contract the assistance to the administrative archives to assure the good maintenance, the reglementation and the utilization of documents and to create a fonds of security copies of documents...

j) executes, in association with the ministries and administration of the USSR, the promotion and the perfecting of the Unique system for secretariats and the Common system for documents of administrations and management; assures the direction of their application on the level of organization and methods;

k) inspects the work of the administrative archives and the maintenance of documents in the secretariats of the minirties, administrations, establishments, institutions,and entreprises;

l) elaborates and approves the archival and secretariat regulations which are obligatory to be respected by all the ministries, administrations, establishments institutions, and entreprises ...

p) organizes the occupational resettlement of the personnel of the establishment falling under the General Archives Directorate at the Council of Ministers of the USSR and of the personnel of the administrative archives. /5

88. The Presidential Records Act of 1978 requires the President of the United States through the implementation of records management in the United States Government to

> take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as presidential records pursuant to the requirements of this section and other provisions of law./6

In Brasil the General Services Administration (SISG) elaborates standards for record management. Similarly , the Director of the Singapore National Archives and Records Centre has the responsibility to

> conduct a records management program for the efficient creation, utilization, maintenance, retention, preservation and disposal of public records./7

The Inspector General of Libraries and Archives in Portugal has to

> take decisions, in agreement with the secretaries-general of the different ministries or their representatives, on all matters relating to security, conservation and arrangement of their archives and libraries./8

The Canadian Dominion Archivist, according to the Public Records Order, shall assess all proposals for destruction of public records in the custody of the departments, removal from the ownership of the Government, microfilming (with particular regard to the appropriateness of the equipment, the efficiency of the processing techniques, the adequance of the proposals regarding the preservation of public records and the economics that might be obtained by using the central microfilming service for machine processing). He has to assess the adequacy of departemental records classification systems, the extent to which the important policies and programs of departments are documented for future research and the extent to which records are stored and handled. The Dominion Archivist may establish standards and issue guides to departments in respect of these matters. /[9]

89. In other countries the National Archives likewise are entitled to draft and/or issue standards relating to records management and to paperwork management; i.e. Algeria, Argentina, Bulgaria (Central Experts Control Commission at the Central Board of the Archives), Victoria (Australia). In Denmark the National Archivist approves any new filing plan (scheme) and changes in existing filing plans.

90. In other countries the National Archivist is assigned the task of promoting efficient and economical records management and of giving advice and assistance to government agencies: Australia, Mauritius, USSR, etc. Most legislation contains some general provision to ensure good records management, for example in Czechoslovakia :

> State organs and socialist organizations shall provide for qualified administration of records ... and shall take care of proper file registration, of purposeful and safe-keeping of records and appropriate disposition .../ 10

The Dutch Archival law states "Public bodies shall keep the records in their charge in proper condition and suitably arranged and classified". For the ministries this is elaborated in the Archives Decree, which obliges the heads of departments to lay down regulations, to see to arrangement and description and to take measures regarding the safekeeping of their records and the provision of storage-space.
On the proposal of the Dutch minister of the Interior (who coordinates

records management in the ministries and central government agencies), the Crown has laid down regulations on records management. These include provisions that the head of the central registries of the ministries must possess the professional qualifications determined by the minister. Filing plans have to be approved by a records management council, which advises the minister. The General State Archivist is a member of this council./[11] In Liberia the law on the Center for National Documentation and Records has a section on the duties of agency heads as to records management. /[12]

Polish legislation charges the ministers to regulate, in concurrence with the director-general of the State Archives, records management in their agencies, especially the maintenance, communication, transfer and destruction of records. In Bulgaria the processing of records is determined by the agencies after consultation with the State Archives. Filing systems and descriptive lists of records have to be approved by the heads of agencies and the State Archives, on the basis of general rules approved by the General Board of Archives. Quebec (Canada) has a committee for records management, composed of the Keeper of the National Archives or his delegate and seven members from government departments and agencies, appointed by the Treasury Board. The committee submits to the Treasury Board for approval standards and policies relating to arrangement and description of records, forms management, operation of a records centre, and all other aspects of records management. Every agency has to appoint a records management co-ordinator and to take other measures for good records management and the implementation of the directives of the Treasury Board. According to Turkish regulations, government agencies must adopt the filing plans and the standards on paper quality, and communication of records issued by the National Archives and the Turkish Institute for standardization.

91. More detailed regulations concerning records management are found in the Swedish General Archival Ordinance, which is elaborated in a circular from the National Archives. One section of this circular sets out standards for the creation and maintenance of records,

another refers to regulations on paper and writing material (e.g. Writing Material Ordinance 1964: 504), still others to stacks, the care and use of records, and arrangement and description. The circular contains regulations not only regarding conventional records, but also specific provisions for machine readable records, microforms and other non-conventional records./[13]

In Pakistan, records management is governed by detailed Secretarial Instructions of the Cabinet Division, 1975. Another example of detailed regulations concerning records management are a circular of the Federal Archives of Cameroon, the directives annexed to a Hungarian governmental decree concerning the application of the archival law, the Romanian legislation, and the regulations issued by the office of the Prime Minister of Thailand.

Conclusion 92. The degree of control by the Archives over records management varies widely from one country to another. In only a few countries does the National Archives have statutory responsibility over the whole range of records management functions.Elsewhere the pre-archival rôle of the National Archives is limited to involvement in, or control over appraisal and disposal. This does not imply that there exists in these countries no records management programmes, embracing the entire life-cycle of all public records, but that such programmes would be based upon regulations issued by a government agency other than the National Archives. Most legislation contains in any case some general provisions to ensure good records management.

FOOTNOTES TO CHAPTER 2.1

1. International Glossary of Archival Terminology, nr. 392.
2. Archivum, vol. 28, p. 423.
3. Archivum, vol. 28, p.425.
4. In Archivum, vol.28, p. 348, in article 5 (e) the words "archives d'ètat" should be replaced by "archives administratives" (information provided by F.I. Dolguih, Director General of Archives at the Council of Ministers of the USSR (Moscow)).

5. Archivum, vol. 28, pp. 348-350. (Author's translation).
6. 44 USC paragraph 2203.
7. Archivum, vol. 20. p. 228.
8. Archivum, vol. 19. p. 93
9. Archivum, vol. 21, pp. 48-49.
10. Archivum, vol. 28, p. 114.
11. Besluit algemene secretarie-aangelegenheden rijksadministratie (Royal Decree on central government records management) 1980.
12. Archivum, vol. 28, pp. 238-241.
13. Archivum, vol. 19, pp. 139-145 (text as amended in 1968). The circular has been amended again in 1979 (no. 679) (information provided by N. Rosqvist, State Archives, Oslo).

2.2 Right of inspection.

93. The right of inspection may be defined as

> the legally imposed responsibility of archives or a records management service to inspect and report, and to propose measures to improve the records creation, maintenance, and disposal practices of operating agencies within its jurisdiction. /1

In some countries inspection is carried out by commissions, one for each government agency, of which a representative of the National Archivist is a member. In other countries the National Archivist (or the inspection division of the National Archives) commands a number of inspectors who act as a liaison with the government agencies.

94. Italian legislation provides for surveillance commissions, one with each government agency which falls under the Archives law (except the Foreign Office). Each commission, which is appointed for three years by the minister concerned, is composed of the head of the agency or his delegate as chairman, an administrator from the agency as secretary, and the keeper of the competent State Archives or his delegate. The commissions supervise the preservation, description and arrangement of records, act as an appraisal committee, control the application of reprography standards and care for the transfer of records to the State Archives. The Italian system was followed in the draft Model Law /[2], from which it was copied into the Algerian law of 1977.

95. In nearly all legislation the National Archivist is vested with "the power to examine any records which are in the custody of any government department" (Bahamas)/[3] and to advise "as to the care, preservation, custody and control of such public records" (Botswana). /[4] Such an advisory function, next to the right of inspection, is assigned explicitly in the legislation of Australia, Bahamas, Botswana, Cameroon, Lebanon, Liechtenstein, Sierra Leone, USA and USSR. The Chief Archivist of New Zealand is entitled to inspect any public records or public archives and to

> give such instructions as to their safe preservation

> and such advice as to their efficient and economical administration and management as he considers necessary. / 5

The State Archival Administration and the State Archives in the German Democratic Republic may give instructions to the agencies to ensure the proper arrangement and security of their records.
In France the National Archives accredit with the different departments and agencies an official (conservateur en mission) as a liaison officer between the Archives and the government department./[6]
Strikingly, the director of the National Archives of Zambia may examine records only at the request of a government department.

96. In Portugal the National Archives are subordinated to the General Inspection of Libraries and Archives, which renders moral and technical assistance to state agencies and controls the preservation, arrangement and safe-keeping of archives and records. If the Inspection finds the condition of preservation, arrangement and safe-keeping unsatisfactory, he warns the competent head of the agency. If, within six months and after two reminders, the situation has not improved, the Inspection is entitled to transfer the records to one of the establishments depending from the Inspection. Comparable provisions are found in the Italian, Spanish and Swedish legislation.
Examples of a penal enforcement of the right of inspection are given by the legislation of Yugoslavia, where an institution is liable to punishment with a fine if the Archives are obstructed in their inspection or not permitted to participate in the selection of records.
A person who does not submit to the instructions by the Archives regarding the safe preservation and maintenance of records or archives, is also liable to punishment with a fine. /[8] In Czechoslovakia the law prescribes

> 1) When exercising professional supervision, the Ministry of the Interior or the respective Archives may require elimination of failures and shortcomings they find and, if these are caused by officials of the organization, may propose to the head of the organization or his deputy to institute disciplinary proceedings against such officials; in case that failures or shortcomings are caused by the head of the organization or his deputy, the Ministry of the Interior or the respective Archives may make

such a proposal with the organ directly superior to the head of the organization.
2) The organization which, despite notification by the Ministry of the Interior or the respective Archives, fails to meet the responsibilities incumbent upon it by this Act or by an operative, generally binding legal regulation concerning the establishment, abolition or administration of the Archives, may be fined not more than 50.000 Cz. crowns by the District National Committee, following a proposal by the Ministry of the Interior or the respective Archives, especially in cases when a damage has been caused or is imminent. In cases of repeated failures to meet any of the above responsibilities the organization may be fined not more than 10.000 Cz. crowns. /9

In countries like France and the Netherlands penalties for misdemeanours regarding public records and archives are included in the penal code.

97. In some laws "secret" records are excluded from the right of inspection : Australia (with elaborate provisions), Bahamas, New Zealand, Tanzania, Sierra Leone. But the Director of the National Archives of Botswana may inspect any public records, notwithstanding that such records are classified as secret or confidential. Under the United States Federal Records Management Act the inspection of records, the use of which is restricted by law or for reasons of national security or the public interest, is governed by regulations made by the Administrator of General Services, subject to the approval of the head of the agency concerned or of the President. In the Netherlands the archive inspectors have access to places where records are kept"with due observance of the security regulations in force relating to secret documents"./[7] This means that the inspector may inspect the material and environmental condition of the records, even when he is not entitled to examine the contents of secret records. According to the Finnish law, the Council of Ministers, with advice of the National Archivist, may exempt certain agencies from inspection.

98. Special mention of the duties of the Archives in examining proposals for new repositories or the reconstruction of existing ones is made in the legislation of the Netherlands and Sweden.

Conclusion 99. The right of the Archives to examine the records creation, maintenance, and disposal practices of the public administration is acknowledged in the legislation of most countries. The Archives are mostly also authorized to give instructions to the agencies for the safe maintenance of their records. Legislation in some countries explicitly provides for enforcement of the measures proposed by the Archives while exercising their right of inspection. The seventh International Congress on Archives (1972) considered it desirable that control regularly exercised by State Archives over the management of current records should be sanctioned by explicit legislation./[10]

FOOTNOTES TO CHAPTER 2.2

1. International Glossary of Archival Terminology, nr. 244.
2. Carobe-Guêze, Draft Model Law, pp. 64-67. In the Draft Model Law, pp. 64-47 and the Algerian legislation there is also an inspection service, composed of inspectors-general who carry out periodical inspections of the services of the archives administration throughout the country. This inspection is clearly modelled after the Italian sovrintendenze archivistiche who supervises the public and private archives outside the State archives.
3. Archivum, vol. 29, p. 59.
4. Archivum, vol. 28, p. 75.
5. Archivum, vol. 21, p. 210.
6. Actes de la septième conférence internationale de la Table Ronde des Archives, p. 15.
7. Archivum vol. 19, p. 64, English translation in : Nederlands Archievenblad, vol. 75 (1971), p. 17.
8. Archivum, vol. 19, pp. 205-206 and 217. See also Archivum, vol.28, pp. 314-315 (Rumania).
9. Archivum, vol. 28, p. 122.
10. Archivum, vol. 24, p. 363.

2.3 Records centres.

100. A records centre or intermediate repository may be defined as

> a building, usually specially designed and constructed, for the low-cost storage, maintenance and communication of current or semi-current records, pending their ultimate disposition./1

According to this definition any special building for storage of current or semi-current records would be a records centre. From a legal point of view however, the essential quality of a records centre is that it is controlled not by the records creating agency, but by the Archives. /2 Thus, the intermediate repositories of, for example, the Carbone-Guêze Draft Model Law and the Turkish legislation - organized and operated by the records creating administration - are not, strictly speaking, records centres, nor is the Dutch Central Appraisal Agency.

101. Records centres are referred to in the legislation of Algeria, Brasil, Canada, Federal Republic of Germany, France, Lower Saxony (FRG), Panama, Quebec (Canada), Senegal, Tanzania, United States. In some other countries (e.g. United Kingdom) records centres exist. In Brasil the records centre functions are carried out by the Division du préarchivage of the National Archives. In France, semi-current records (archives intermédiaires) may be kept in records centres (dépôts de préarchivage), administered or supervised by the direction of the Archives de France. In the absence of records centres the semi-current records are kept either in the offices of the records creating agency, under supervision of the Archives, or by the Archives in archival repositories. The time limits for maintaining current records, preservation of semi-current records and disposal are fixed by agreement between the administration concerned and the Archives de France. The USA Federal Record Management Act entitles the Administrator of General Services to establish, maintain and operate records centres for federal agencies.

Conclusion 102. It is outside the scope of this study to discuss the concept of records centres operated by the Archives as developed in Belgium,

Canada, The Federal Republic of Germany, the United Kingdom and the United States, as well as the concept of the intermediate archives which are being developed in Latin America. Legislation, in any case, should not be an obstacle to the establishment of such records centres and intermediate archives.

FOOTNOTES TO CHAPTER 2.3

1. International Glossary of Archival Terminology,nr. 390.
2. NATIS Guideline, paragraph 133.

2.4 Appraisal and destruction.

103. Appraisal may be defined as

> determining the eventual disposal of records based upon their current and future administrative, fiscal and legal values and their evidential, informational and research values./1

Destruction is the method of disposal of documents of no further value /2 . Disposal by transfer of documents with enduring value is treated in chapter 3.1.

104. In nearly all legislation the final decision to appraise and destroy records is made either by the National Archivist on his own authority or by the Minister to whom the Archives are subordinated.
Sometimes the approval of both the head of the creating agency and the National Archivist is needed, without an indication of any priority position, as in Algeria, Czechoslovakia, Poland, Quebec (Canada), Yugoslavia. These decisions frequently are prepared by special appraisal commissions or by the Archives Council (see chapter 1.8). Such special commissions exist in Bulgaria, Italy, The Netherlands (not on a permanent basis) and Romania. In the Bulgarian law the recommendations of the agencies' expert commission must be endorsed by the Expert Control Commissions of the State Archives, their work being guided by procedural instructions from the General Board of the Archives. This Board has a Central Experts Control Commission which treats questions of principle regarding appraisal and approves records schedules. In Romania, too, there are appraisal commissions within the agencies who propose destruction to the State Archives. Under Dutch legislation the Minister responsible for the Archives, and the Minister to whom the records creating agency is subordinated have to verify, before establishing a records schedule, whether the schedule has been drafted by experts on the functions of the agency concerned, together with experts on the records management of that agency and the General State Archivist or his delegate.
In the Draft Model Law /3 the control commissions are given the final decision. The authors see no logical foundation for final approval by the State Archives, since each commission is presided over by the

director of Archives. Moreover, the chairman of a control commission may submit doubtful cases to the competent Archives. In addition, the decree concerning the application of the law may specify that decisions on destruction of records must be taken by the commissions unanimously. The Draft Model law has been followed in the Algerian law, but without any provision against overruling the archivist when the final decision on destruction is taken.

105. In many countries preparatory and advisory work regarding appraisal is carried out by an Archives Council, in which generally the government departments and the academic profession are represented, for example in Illinois (USA), Greece, Lesotho, Liberia, Mauritius, the Netherlands, Nigeria, Panama, Turkey. In Chili there is a special Comisión de selección descarte which proposes the appraisal standards and records schedules to the Minister. In Ghana the permanent committee on public archives, chaired by the Archivist, orders destruction, on the proposal of the agencies. In Egypt, according to the 1954 archival law of the United Arab Republic, a records committee within each ministry acts as liaison with the National Archives. Proposals for destruction are made by the committee in collaboration with the National Archives and sent to the Superior Council of the National Archives, who advises the minister. Regulations in Thailand, issued in 1963, prescribe appraisal committees at each agency, who report to the agency's head. These regulations were in 1972 reported to be under review to provide for consultation on the appraisal between the National Archives and the agency concerned /4. In some legislation (e.g., Botswana) the National Archivist specifically is entitled to

> consult with any person whom he considers qualified to advise him as to the worth of such public records for permanent preservation before authorizing the destruction thereof. /5

106. In current legislation a distinction is made between (a) destruction according to records schedules, (b) destruction of non-scheduled records, and (c) destruction of records that have been transferred to the Archives. Sometimes the law or the regulations enumerate documents

that either are not considered as records, and therefore may be destroyed without special approval, or are designated as records without archival value and therefore may be destroyed following a simple procedure or without any special approval. A good example are the Norwegian regulations, which list several types of documents not to be considered as records. The legislation of the German Democratic Republic prescribes a "simplified destruction procedure" for certain categories of records listed in a special inventory issued by the archival administration. Swedish legislation enumerates 14 categories of records that may be destroyed after the expiration of a prescribed retention period, determined by the authority. Letters of transmittal, folders, communiqués for remittal, and delivery receipts may be destroyed, on condition that the records or files are not thereby inappropriately mutilated or that the retention of the comments and other information which may be written on them is not thought desirable. Applications for employment are returned to the applicant. The legislation of France and Ivory Coast specify that records which contain data recapitulated in another document, printed or not, may be destroyed.

107. On the other hand, the law may specify which records are not to be eliminated, for example records dating from before a certain date (France 1799, Northern Ireland and Scotland (United Kingdom) 1800, Turkey 1839, Yugoslavia 1850, Ivory Coast 1920, Sudan 1925). The Czechoslovakian regulations contain an exhaustive enumeration of types of documents which are to be kept under all circumstances.

108. Records schedules and standards for destruction are generally established by the minister responsible for the National Archives (in Liberia and Cameroon the President, in the USA the Administrator of General Services), sometimes in concurrence with the minister to whom the records creating agency is subordinated (Netherlands, Czechoslovakia). In Canada the Dominion Archivist may issue schedules for housekeeping and other records common to most departments, while in Poland and Yugoslavia the schedules are established, on the basis of ministerial directions, by the head of each agency in concurrence

with the State Archives. According to the Dutch decree regulating the implementation of the Archives Act, non-scheduled records may be destructed only with the approval of the General State Archivist, in concurrence (when provincial or municipal records are concerned) with the provincial inspector or the municipal Archives. The opinion of the General State Archivist may be overruled by the Minister. In Cameroon such an authorization to destroy non-scheduled record is given by the Archives Council.

109. Generally records for which there have been substituted microforms or other reproductions may be destroyed (Israel, Portugal, Puerto-Rico, United States, Zaire). In the German Democratic Republic and the Netherlands destruction of originals after their reproduction is only allowed for documents which are scheduled for destruction anyway.

110. The legislation of the United States and many other countries contain special provisions regarding the evidential value of reproductions./[6]

111. In Sweden destruction of information in machine-readable form and on microform is governed by the same main rules as destruction of paper records. Furthermore, deletion of information from machine-readable records is allowed provided that the information is transferred to a form in which it still can be read, heard or in another way understood. For example, converting of information from one ADP-medium to another, provided they have same standard of quality and that the information is not altered.
In Australia any treatment of a machine readable record that would prevent obtaining information from the record is deemed destruction of the record.

112. In Israel the State Archivist's application to the Archives Council for destruction of records may be published in the official gazette. Anyone may oppose the destruction; if the opposition does not seem acceptable to the State Archivist, he shall refer the matter to the Council for decision.

113. The United States legislation provides for emergency destruction: during a state of war the head of an United States agency may authorize the destruction of records in his legal custody situated in a military or naval establishment, ship, or other depository outside the continental United States, the retention of which would be prejudicial to the interests of the United States, or which occupy space urgently needed for military purposes and are, in his opinion, without sufficient administrative, legal, research, or other value to warrant their continued preservation. Within six months after the disposal a written report has to be submitted to the Administrator of General Services.

114. Norway, like the United Kingdom, knows the system of two reviews, which is applied to all files which are not scheduled for destruction or subject to special appraisal procedures. The first review is carried out when the file is five years old, by the administration, assisted and co-ordinated by the National Archives. The second review takes place after some 25 years, before the transfer to the Archives. The decision then has to be taken jointly by the agency and the National Archives. If a conflict arises, the Minister has to decide.

In Switzerland most records are appraised before their transfer to the Federal Archives. Files which the creating agency has marked 10, 30 or "X" (=indefinite) are reviewed again by the Federal Archives after ten respectively thirty years.

Conclusion

115. Current legislation covers the following aspects of appraisal and destruction./ [7]

1) The respective rôles of the National Archives and the government departmentsin the appraisal function. The appraisal and destruction of non-current records is shared in a number of countries by the archival and the records management services. There is and should be some supervision by the Archives in every case. In appraisal, the administrative value may be assessed by the creating agency, but it is the responsibility of the archivist to decide on the archival (or historical) value, which justifies indefinite or

permanent retention.

2) The degree of formality needed to approve and implement appraisal decisions. A distinction may be made between records included in records schedules and non-scheduled records.
3) The authority upon which public records may be destroyed
   a) the Minister, responsible for the Archives, mostly with the advice of the National Archivist or the Archives Council; or
   b) the National Archivist, sometimes with advice of the Archives Council; or
   c) the National Archivist with concurrence of the records creating agency.
4) The authority upon which records after transfer to an archival institution may be destroyed.
5) The enumeration of categories of routine records that in any case may be eliminated; such numeration may be included in regulations or form a part of a general records schedule.

FOOTNOTES TO CHAPTER 2.4

1. International Glossary of Archival Terminology , nr. 22.
2. International Glossary of Archival Terminology, nr. 133.
3. Carbone-Guêze, Draft Model Law, pp. 64-67.
4. Archivum, vol 20. p. 235.
5. Archivum, vol. 28, p. 77.
6. See: G. Weill, The admissibility of microforms as evidence: a RAMP study (PGI/81/WS/25). Paris, Unesco, 1981, 84 p.
7. Cf. NATIS-Guideline, paragraph 131.

3. ARCHIVAL FUNCTIONS AND ACTIVITIES.

3.0 Introduction.

The analysis in chapter 1.5 was restricted to circumscriptions in current legislation of the functions and organization of public archival services. In the following chapters legislation and regulations concerning each of the main archival functions (acquisition, preservation and communication) are reviewed. Of the acquisition function the transfer of records to the Archives is handled in chapter 3.1 (see about acquisition of private archives chapter 1.4 and the deposit of official publication chapter 3.2). Chapter 3.3 deals with preservation, while main components of the communication function are reviewed in chapters 3.4 (arrangement and description), 3.5 (access) and 3.6 (reprography).

3.1 Transfer.

116. Transfer of records is the act involved in a change of physical custody of records with or without a change of legal title /[1]. By transfer records come under the jurisdiction of the archival administration. The following aspects of transfer should attract the attention of the legislator /[2]:

(i) prescription of the general retention period (the number of years after their creation, that records should generally be transferred) and the transfer procedure;

(ii) statutory exceptions to the general retention period and the procedure for granting temporary exemption (postponement of transfer);

(iii) procedure for allowing transfer before the statutory retention period has elapsed;

(iv) specific provisions for transfer of special kinds of material, e.g. with a view of legal deposit, or to ensure effective control of audio-visual and machine readable records;

(v) provisions for transfer to a repository other than the National Archives;

(vi) exemption for certain government departments from the normal arrangements for transfer.

117. In current legislation the general retention period for all records varies from 100 years (Belgium, Sweden for local authorities records) to 5 years (Argentina, Dahomey, Mauritania). A fifty year period exists in the Netherlands and Puerto Rico. In Italy and Iran the retention period is 40 years, while Rumania, San Marino, United Kingdom, Yugoslavia and Zaire apply a 30 years period. In the legislation of several countries a 15 or 10 year retention period is prescribed : Bulgaria, Finland, Hungary, Ivory Coast, Liechtenstein, Poland, Switzerland, USSR. This applies to the general retention period for all records; in many cases the period of transfer of certain records may vary from the general rule. In the USSR, for example, the retention period for central government records etc. is 15 years, for records of agencies at the regional and district level 10 years, and for records of agencies at lower levels (cities etc.) 5 years.

118. Sometimes the general retention period is not prescribed in the law, but in regulations (Gambia, Sierra Leone). In Turkey there is no general retention period in the law : the Council on Archives decides when records should be transferred. The general retention period prior to transfer to the archives may, however, be formulated as a maximum. In the Netherlands, for example, there is a proposal currently under consideration to prescribe transfer "as soon as records are no longer needed for the conduct of current business, but in any case after 25 years". A rule like this is applied in Zaire, where records which no longer have immediate administrative use have to be transferred, even when they are less then 30 years old (the general transfer period. The Rumanian legislation provides for yearly transfer of files concerning terminated affairs.

119. There are some countries without a legal retention period. In France for example, the duration of the retention of records by the creating agency is a matter of individual regulations, issued for each agency by the Directorate of the Archives of France and the concerned agency. The same applies in Sweden for the records of central and regional

authorities. In Cameroon the retention period is left to the discretion of the creating agency, but in case the agency needs a longer period than 20 years, this has to be justified.
In Yugoslavia the retention period has to be negotiated between the agency and the Federal Archives, but it may not be less than 5 and not more than 30 years. In Bavaria (Federal Republic of Germany) the agencies are requested, when in the course of business the matter is considered to be of special evidential or informational value, to indicate the need for future transfer, by marking the file "State Archive".

120. The law frequently prescribes that transfer should take place every fifth year (e.g. Denmark, Hungary) or every tenth year (e.g. Belgium, Sweden for local authorities records) or that the transfer should be effected within ten years after the date the records have reached the prescribed retention period (Netherlands).According to the Dutch regulations, the creating agencies are bound to close all files every year ending with 9, to facilitate transfer. In Norway this term is 5 years.

121. The procedure of transfer is normally treated in regulations. The records to be transferred should be in good material condition (Denmark) and well arranged (Algeria, France, German Democratic Republic, Liechtenstein, Poland, Swiss canton of Bâle, USSR). The Yugoslavian law gives the Federal Archives the right to require from the transferring agency proper arrangement of the records. In exceptional cases, the Federal Archives can arrange the records at the creating agency's expense. In Hungary, Israel, the Federal Republic of Germany, the German Democratic Republic, and the USSR, one encounters the provision that together with the records a copy of the registry finding aids should be transferred.

122. The transferring agency has to give notice, some time in advance, of the transfer. In Belgium the State Archives may, in an urgent case, decline transfer. In the United Kingdom the Lord Chancellor

may direct, if it appears to him in the interests of the proper administration of the Public Record Office, that the transfer of records shall be suspended until arrangements for their reception have been completed. There is a comparable provision in the Tanzanian legislation.

123. The transferred records should be listed in a transfer list. A copy of this, signed on behalf of the archival administration, will be kept, as an official record of the transfer, by the transferring agency. In most countries the costs of transportation of the transferred records are borne by the transferring agency.

124. A circular of the Swedish National Archives /[3] contains special provisions on the transfer of machine-readable records and microfilms. Machine-readable information shall be recorded on magnetic tape. The tape is to be transferred in duplicate; at least one copy should be new. Both tapes shall comply with the standards set by the National Swedish authority for testing, inspection and metrology. Together with the tape, the relevant documentation, including existing data block printouts with information losses and notations regarding the physical condition of the tape, must be transferred. Before transfer the information entered in the computer log must be checked to see that it corresponds with that in the system documentation. Transfer of microfilm must include a copy for archival purposes and a reading copy.

125. In a number of countries the retention period for certain categories of records is different from the general retention period. Examples are the notarial records (Puerto Rico 60 years, France and the Netherlands and the USSR 75 years), civil registers (France, Poland and Romania 100 years, Bulgaria and the USSR 75 years), personnel records (Bulgaria and USSR 40 years). Apparently the reason for this prolongation of the retention period is the need of the creating agency to retain records longer for use in current business. Sometimes postponement of transfer is considered necessary to delay access

to the records. In Malaysia, for example, the Minister has

> the power to withhold public records containing secret and confidential information from being transferred to the National Archives. /4

In Algeria, however, the Archives may accept an earlier transfer of records for reasons of secrecy or protection of privacy. According to the Bulgarian law the Minister may fix a longer or shorter term of transfer with respect to the nature of the records or to "the defence of the interests of the State and the citizens". /5 In Cameroon the records of the armed forces and the ministry of foreign affairs are transferred after 50 years, instead of 20 years. In Belgium all records with an incontestable current administrative use, records which are used as exhibits in museums attached to the government departments, and copies of the civil registers kept by the courts are exempted from transfer to the State Archives.

126. Apart from exceptions to the general retention prtiod for certain categories of records, most legislation provides for exceptions in special cases, in which a government department needs to retain its records of current business and where it would be impracticable or inconvenient to rely on procedures which allow transferring agency to borrow documents from the archival administration /6. For example, in Malaysia the director of the National Archives may defer the transfer

> where he is satisfied that by reason of the nature of the records the immediate transfer would unduly prejudice the administration of any public service or would not be in the public interest./7

In some countries the authorization for deferment has to be given by the responsible Minister (e.g. Ivory Coast, Netherlands, Tanzania, United Kingdom, in Zaire even by the President), in other countries by the archival administration or director of the National Archives. (Malaysia, Norway, Poland, Singapore, Sri Lanka). In Rumania transfer may be postponed when there is lack of space in the archival repository.

127. For specific types of records sometimes an earlier transfer is prescribed. According to the Polish law photographs, sound recordings and motion pictures have to be transferred after 5 years, while the

transfer period for conventional records of the central government is 15 years. In Rumania photographs are transferred after 15 years instead of the normal 30 years, motion pictures, TV-films and other audio-visual records are transferred after three years, as in the USSR. In the USSR machine-readable records are transferred after 5 years.

128. In some countries the National Archives are the statutory place for legal deposit:either the only place, as in Mauritius and Zambia, or together with the national library, as in Cameroon, Costa Rica, Dominican Republic, Guyana, India, Madagascar, Sri Lanka, and Sudan (see chapter 3.2). In several instances the rôle of the National Archives in this matter is restricted to non-conventional records /[8] or to government publications. In these cases it may be necessary to define the arrangements for the deposit of such material shortly after publication. /[9] Examples are Algeria, Mauritius, Mexico, Wisconsin (USA) (prior to the distribution). In Mauritius a specimen of every issue of postage stamps, currency notes and coins has to be deposited in the Archives Department within one month,together with an official statement containing the history and the purpose of the issue. The Archives Department receives also copies of the minutes of the municipality and town councils and copies of records of the Supreme Court dealing with government property within, respectively, one month of their adoption and one week of the judgement.

129. The arrangements for archival custody in some countries require transfer of public records in certain cases to an archival authority other than the National Archives./[10] The General State Archives in the Netherlands, for example, are competent for keeping the archives of those public bodies whose responsibilities extend nationwide, while the State Archives in the provinces keep the archives of central government bodies in the provinces whose responsibilities do not extend nationwide. The Crown however may rule that records of public bodies whose responsibilities extend nationwide be kept in the State Archives in the capital of the province where such

bodies are established, and reversely, that archives of public bodies whose responsibility extend over more than one province but not throughout the entire country, be kept in the General State Archives.

The records of a federal government agency produced in offices in different parts of the country and dealing with regional matters under federal control may be transferred to the custody of provincial or State archival authorities if no regional branches repositories of the National Archives have been established ./[11] In the United Kingdom, if it appears that a place outside the Public Record Office affords suitable facilities for the safekeeping and preservation of records and their inspection by the public, the Lord Cancellor may appoint it as a place of deposit. He may direct that public records shall be transferred not to the PRO but to such a place of deposit, or from the PRO to a place of deposit. Comparable provisions are found in the legislation of Botswana and Tanzania.

130. In some countries one or two ministries or government departments have been exempted from the normal arrangements for transfer.

The records of the ministry of foreign affairs are not transferred to the National Archives in Belgium, Bulgaria, France, the Federal Republic of Germany and Italy. In Belgium and France the records of the ministry for defence are also exempt from transfer to the National Archives. In Yugoslavia transfer to the National Archives is not compulsory for the records of the foreign office, the ministries of defence and the interior, the President, etc. The ministries of defence, the interior and foreign affairs in Poland are even totally excluded from the jurisdiction of the National Archives. In the Federal Republic of Germany and Italy the records of the houses of Parlament are transferred to the Parlementary archives and not to the State Archives.In Bulgaria the ministries of Internal and

Foreign Affairs, the Academy of Sciences, and the General Board of Geodesy and Carthography keep their own archives; the archives of the ministry of Foreign Affairs up to 1944 however are kept at the Central State Historical Archives. The Polish archival administration may authorize government agencies, especially the Academy of Sciences, to keep their archives, under the control of the archival administration. In these cases, the general retention period does not apply. In the German Democratic Republic universities, academies of sciences and the army keep their archives, which however are part of the State Archival Fonds.

Conclusion 131. In 1967 the 10th Round Table on Archives recommended two alternatives :
a) a 50 year retention period, with the possibility of earlier access for a large number of records,
b) a 30 year retention period, with the possibility of deferment to protect the interests of the State and the citizens /[12].
Legislation of most countries has endorsed the second alternative: a 30 years retention period./[13] A shorter retention period may burden the Archives with tasks that are better fulfilled by the administration and/or a records centre, but in many developing countries there is real need to examine the 30 years retention period in the light of governmental efficiency and economy, particularly through the use of records schedules and earlier authorized destruction of records lacking archival value.
One may question whether the necessary protection of the interests of the State and of the citizens could be better attained by delay of access to records, or by postponement of their transfer to the Archives. The preservation of records may be safequarded more satisfactorily by their timely transfer to the Archives, on condition of restricted access for a limited period, when necessary.

FOOTNOTES TO CHAPTER 3.1

1. International Glossary of Archival Terminology, nr. 480.
2. NATIS Guideline,paragraphs 134-139.
3. Archivum, vol. 19, pp. 139-145 (text as amended in 1968). The circular has been amended again in 1979 (no 679)(information provided by N. Rosqvist, State Archives, Oslo).

4. Archivum, vol. 20, p. 210.
5. Archivum, vol. 28, p. 64.
6. NATIS Guideline, paragraph 135.
7. Archivum, vol. 20. p. 210.
8. Pomassl, Survey of existing legal deposit laws, p. 90; Lunn, Guidelines for legal deposit legislation, paragraph 13.2.
9. NATIS Guideline, paragraph 137.
10. NATIS Guideline, paragraph 138.
11. NATIS Guideline, paragraph 138.
12. Actes de la dixième conférence internationale de la Table Ronde des Archives, pp. 20-30, 82.
13. Prasad, The liberalisation of access and use, pp. 137-138.

3.2 Deposit of official publications.

132. Although in most countries legal deposit of books and other printed publications is regulated outside the archival legislation, there are some archival legislation which contain provisions on legal deposit. Because legal deposit legislation has already been treated /[1], the present analysis is restricted to the rôle of an archival institution as a possible place of legal deposit.

133. In a few countries the legal deposit of books and other printed publications is with the National Archives only. In some countries the legal deposit is with the National Archives in addition to the National Library. Evidently all archival institutions keep printed archives, even if they do not call them so: records in printed form created, received and maintained by an agency, institution, organization or individual in pursuance of its legal obligations or in the transaction of business of any kind, permanently preserved because of their archival value /[2]. These printed records will be transferred together with the other records. In some countries legislation contains a special provision for the deposit (before the normal transfer period) of government publications with the National Archives.

134. In Mauritius and Zambia the National Archives receive all printed publications for legal deposit. In Zambia this is regulated in the Printed Publications Ordinance. In Mauritius the Archives Ordinance treats both the legal deposit function (see paragraph 128) and the archival functions of the Archives Department. Countries were the National Archives and the National Library each receive a copy of every publication are: Cameroon, Costa Rica, the Dominican Republic, Guyana, India, Madagascar, Marocco, Sri Lanka and Sudan.

135. The National Archives of Bulgaria, Ivory Coast, Laos and Mauretania are by law obliged to keep an "administrative library", consisting of all government publications, laws, year books etc., and other legal publications necessary for research in institutional history. Of every official publication in Mauretania, Puerto Rico and Zaïre two copies are deposited with the National Archives. The Mexican

National Archives receive copies of all promulgated laws and regulations.

Conclusion 136. It is not a primary function of an archival institution to serve as a place for legal deposit of books and other non-archival published material. Sometimes it is difficult to draw the line between governmental publications and government records in printed form. This may be a reason to provide the Archives with a copy of all government publications.

FOOTNOTES TO CHAPTER 3.2

1. NATIS Guideline, paragraphs 55-59; Pomassl, Survey of existing legal deposit laws; Lunn, Guidelines for legal deposit legislation.
2. Cf. International Glossary of Archival Terminology, nr. 370.

3.3 Preservation.

137. Preservation may be defined as "the basic archival function of storing and protecting records/archives". /[1]
In current archival legislation this archival function may be formulated in a general clause, either applicable to records as well as archives, or as one of the responsibilities of the National Archives. Sometimes this general clause is elaborated in more detailed provisions, but in most cases this is left to regulations. In some legislation security microfilming is especially mentioned.

138. The most general clause is that which states that the State assures the protection, the preservation and the management of the historic-archival patrimony (Algeria). Other examples include "archival documents shall be protected by the State" (Czechoslovakia), and "Public bodies shall keep the records in their charge in proper condition and suitably arranged and classified"(Netherlands) . /[2] The Swedish General Archives Ordinance prescribes :

> Archives shall be kept and handled with care. Special care shall be taken to ensure that they are protected from moisture and fire as well as inaccessible for unauthorized persons.
> An authority which proposes to build new archival premises or to alter existing ones shall make its plans available for the scrutiny of the archival authority before adopting them.
> The opinion of the authority shall, when possible, be sought when hiring premises for archival purposes.
> When moving an archive to new or altered premises, the archival authority shall be notified. /3

Comparable regulations exist in the Netherlands.

The Rumanian law states that records should be kept in specially constructed repositories or in specially adapted buildings, which must be furnished with adequate systems for preservation and fire prevention.

139. In most countries one of the functions assigned to the National Archivist is the responsibility for the preservation and security of public archives under his control (see chapter 1.5).

In the United States

> The Administrator of General Services shall provide for the preservation, arrangement, repair and rehabilitation, duplication and reproduction (including microcopy publications) ... of records ... transferred to him. /5

Such a responsibility is assigned to the National Archivists of the Bahamas, Botswana, Gabon, Ghana, and Sri Lanka. The archival law of Puerto Rico even numerates different means of preservation: use of a vacuum chamber, lamination, encapsulation and photography. One of the responsibilities of the General Directorate of the USSR State Archives is the development of systems and methods for conservation, restoration, use, and protection of documents and to make a list of materials and machines needed by the State Archives for these matters. The State Archivist of the Swiss canton of Graubünden has to take precautions for evacuation and security of vital records. The law in Graubünden further stresses the importance of security microfilming and the preservation of security microfilms. The lower governments in Graubünden are not allowed to handle records with chemicals or otherwise, without approval of the State Archivist. "Conservation of seals and repair of charters and books must be carried out by professionals". /6 In Italy there are an Instituto centrale per la patologia del libro, and an Instituto Centrale per il restauro, both part of the Central Administration of the Ministry.

140. Security microfilming is mentioned, for example, in the regulations for the Spanish ecclesiastic archives and in the legislation for Lower-Saxony (Federal Republic of Germany), Rumania, and the USSR. In Bulgaria and in Poland the researcher is preferably provided with reproductions instead of the original documents.

141. The Keeper of the Public Record Office (United Kingdom), as his colleagues in Kenya, Lesotho, Tanzania and Tasmania (Australia), is authorized to make special arrangements for the separate housing of films and other records which have to be kept under special conditions. In the legislation of Lesotho, Finland, Singapore, and Zambia the National Archivist is specifically authorized to cause any archives to be repaired or bound or otherwise dealt with as he may

deem necessary for the due preservation thereof. The law of Laos prescribes that the archives building should be isolated, well locked and protected against inundations and fire.

Conclusion 142. The attention paid by current archival legislation to preservation is inversely proportional to the importance of this basic archival function. There are, however, some good examples of legislation forming the basis for more detailed regulations or instructions and a comprehensive preservation programme (Sweden, United States, USSR).

FOOTNOTES TO CHAPTER 3.3

1. International Glossary of Archival Terminology, nr. 364 (1).
2. Archivum, vol.28, p. 115; Archivum, vol. 19, p. 52 (English translation in Nederlands Archievenblad, vol. 75 (1971) p.2).
3. Archivum, vol. 28, pp. 374-375.
4. Archivum, vol 19, pp. 63-66 (English translation in Nederlands Archievenblad, vol. 75(1971) pp. 16-18).
5. Archivum, vol. 21, p. 87.
6. Archivum, vol. 28, p. 361 (author's translation).

3.4 Arrangement and description.

143. The arrangement and description of archives/records may be defined as the establishment of administrative and intellectual control, by organizing the archives/records, and by describing them in finding aids./[1] What has been said in chapter 3.3 about the legal provisions concerning preservation, applies also to arrangement and description. These archival functions are mostly formulated in a general clause, as one of the responsibilities of the National Archives. Sometimes this clause is elaborated in more detailed provisions.

144. On this matter article 2 of the Dutch archival law is very general:

> public bodies shall keep the records in their charge in proper condition and suitable arranged and classified./[2]

The United States federal legislations prescribes :

> The Administrator of General Services shall provide for the preservation, arrangement, ...description, and exhibition of records or other documentary material transferred to him as may be needful or appropriate, including the preparation and publication of inventories, indexes, catalogs, and other finding aids or guides to facilitate their use. /[3]

The Public Records Act of the United Kingdom says

> The Keeper of Public Records shall have power to do all such things as appear to him necessary or expedient for maintaining the utility of the Public Record Office and may in particular : a) compile and make available indexes and guides to, and calendars and texts of, the records in the Public Record Office. /[4]

Legislation of the same type exists in the Bahamas, Botswana, Gambia, Hungary, Kenya, New Zealand, Nigeria, Puerto Rico, Quebec (Canada), Singapore, Sri Lanka, Tasmania (Australia), Tanzania and Victoria (Australia). To cite the Victoria example :

> The Keeper of Public Records shall be responsible for : (a) the preservation and security of public records under his control ; (b) the logical and orderly classification of such records and the publication of lists, indexes and other guides facilitating their use..../[5]

The Hungarian legislation stipulates that archival institutions have to make accessible for research the archives in their custody by arranging and describing them according to scientific standards, and by making finding aids and assuring other conditions for research.

145. The universal principle for archival arrangement is laid down in the USSR legislation :

> The documents belonging to the State Archival Fonds of the USSR are kept and arranged by the archival institutions per fonds, collections and units. /6

The instructions for the Swedish National Archives prescribe also that the archives

> shall be arranged and catalogued in such a manner that each individual archive is kept together adhering to the order that was created as a result of the organization and activity of the records creator. /7

146. A Bulgarian ordinance says

> The structure of the fonds of the archives shall be defined by the Head of the General Board of the Archives on the proposal of the Coordinating Methodical Council at the General Board of the Archives ... The order of collecting, classifying, preserving, scientific-technical researching and processing and exploiting the archival documents of the State Archival Fonds ... shall be determined by an instruction of the Head of the General Board of the Archives ... The documents of the State Archival Fonds shall be grouped in epoch and types. The distribution according to epochs shall be done by observing the principle of the indivisibility of fonds and of the complexity of fonds ... /8

147. In the German Democratic Republic, the USSR and other countries one of the functions of the General Directorate of the Archives is to issue regulations and instructions on the arrangement and description of archives. In the Swiss canton of Geneva

> The archives are arranged according to the classification scheme annexed to the present regulations and following the principle of provenance. /9

The Geneva regulations call for regular updating of inventories and the elaboration of repertories and analysis of documents to facilitate research and consultation :

> Every register or bundle should bear a reference number. The documents within each bundle should be numbered. All documents ... must bear the stamp of the State Archives. /10

This last provision is found in the legislation of a number of other countries. In Mauretania the classification scheme is fixed by order of the President of the Republic. In Lebanon and in Liechtenstein one

of the responsibilities of the National Archivist is to assist the agencies, public institutions and municipalities in the arrangement and classification. In many countries the Archives Council is responsible for developing regulations for arrangement and description, for example in Poland and in Croatia (Yugoslavia). As early as 1834 a royal decree in Belgium ordered the publication and distribution of inventories of the State Archives.

148. The legislation of the Dominican Republic, Greece and Spain treat the arrangement and description to a rather full extent. The regulations concerning the National Archives of the Dominican Republic prescribe :

> To classify a document means to determine to what fonds it belongs and with which other documents the document in question forms a whole, in which fonds it should be kept integrated. Each fonds should consist of as many divisions as indicated by the proper nature of the fonds as well as by the inner organization of the Archives.
> The documents having been classified they can be arranged. For the arrangement of documents the archivist has to bear in mind that it is imperative not to undo the fonds to which a certain document belongs, which moreover, should not in any case be separated from its fonds e.g. for reasons of alphabetical or chonological arrangement. Instead, the archivist should in every possible way try to keep the original fonds intact and, only arrange it as his own experience will dictate.
> Once the documents have been arranged, the next move is the cataloguing. This operation consists of two steps: a) inventorying and b) cataloguing in the strict sense. To make an inventory is to classify the files of each fonds section by section; and the cataloguing, properly speaking, is the succinct but nevertheless complete description of each and any one of the documents of every file.
> For each fonds an inventory is to be made of the files it contains, with its own designation and then for each file the catalogue should be composed in correspondence with its documents. /11

The regulations for the General State Archives of Greece say

> The documents transferred to the National Archives are arranged per fonds, divided into groups, each of which constitutes a parallel number of files. A special repertory is made up for every fonds. At the decision of the Commission a scientific inventory, giving names of persons, places and subjects, is made. For each file an inventory in two copies is made; it comprises a summary of the contents, the state and the number of documents with the file. /12

Since 1901 the regulations for the Spanish State Archives prescribe a classification schema and different types of inventories, catalogues, and other finding aids. /[13]

Conclusion 149. In most countries legislation provides a basis for arrangement and description of records/archives, frequently by assigning the creating agencies and/or the National Archives specific responsibilities in this matter. One would expect that detailed provisions would be left to regulations and instructions, but there are countries where the legislation has devoted considerable attention to arrangement and description. Normally it would have been sufficient to lay down only the main principles, particularly in view of changing character of modern textual records/archives as well as the special requirements of audiovisual and machine/readable records/archives.

1. Cf. International Glossary of Archival Terminology, nrs. 35, 131 and 187.
2. Archivum, vol. 19, p. 52 (English translation in Nederlands Archievenblad, vol. 75 (1971) p.2). The provision applies to archives as well.
3. Archivum, vol. 21, p. 87.
4. Archivum, vol. 17, p. 185.
5. Archivum, vol. 28, p. 54.
6. Archivum, vol. 28, p. 340 (author's translation).
7. Archivum, vol. 28, p. 379.
8. Archivum, vol. 28, pp. 66 and 67.
9. Archivum, vol. 28, p. 356 (author's translation).
10. Archivum, vol. 28, p. 357 (author's translation).
11. Archivum, vol. 28, p. 167 (author's translation).
12. Archivum, vol. 17, p. 211 (author's translation).
13. Archivum, vol. 17, pp. 96-97.

3.5 Access.

150. Access is the availability of records/archives for consultation and use as a result both of legal authorisation and the existence of finding aids. /[1] Accessibility by means of finding aids is treated in chapter 3.4, while physical access to records/archives is the subject of the present chapter. More detailed information and guidelines are given in another RAMP study, by M. Duchein. /[2] Contrary to the present study Mr. Duchein reviews also how access to archives works in practice, which may deviate from the letter of the law, either negatively or positively. For example, in some countries where archives are legally accessible, access is in practice granted only after a cumbersome and lengthy procedure.

151. One may distinguish between legislation on access to public records in terms of whether or not the transfer to an archival institution makes any difference. Thus, the concern is with

(i) access to records whether or not transferred
  (a) from the moment of their creation
  (b) when they have reached a certain age (access date)
(ii) access only to transferred records, sometimes after elapse of a certain time.

In both of the above cases there will be exceptions concerning

(i) access to records/archives which would normally be closed
(ii) limitation on access to records/archives which normally would be accessible (restricted access) on account of
  (a) the material condition of the records /archives, or
  (b) protection of privacy or national security (security classification) or
  (c) conditions imposed by the donor of private archives.

152. The freedom and liberty of access to archives constitutes a right of every citizen./[2] In Spain the right of access is laid down in the constitution. In a number of countries all (or some) public records are under "freedom of information" legislation in principle accessible

from the moment of their creation, for example: Australia (draft Freedom of Information Bill), Canada, France, and the United States./[4] Some legislation (Algeria, Botswana, France, United Kingdom, Tanzania, Zambia) explicitly states that records wich were accessible before their transfer to archives will remain open for inspection. Most archival laws contain the principle of access to transferred archives. In many countries however the archives must have reached a certain age before they may be consulted by the public:

20 years in Botswana, Cameroon, Israel and Zambia

30 years in Bahamas, France /[5], Sri Lanka, United Kingdom (Public Record Office), Gambia, India, Kenya, Tanzania

35 years Lesotho, Switzerland (Federal Archives)

40 years Austria

50 years Czechoslovakia, Denmark, Ghana, Ivory Coast, Liechtenstein, Madagascar, Nigeria.

In the legislation of Andorra, Gabon, Italy, Japan, Netherlands, San Marino and Zaire no access date is mentioned, but one should bear in mind that in some of these countries the period of the retention originating agencies is 30 (San Marino, Zaire), 40 (Italy) or 50 (Netherlands but some records are accessible earlier under Freedom of Information legislation) years.

153. The access date may vary for different categories of archives. In France medical records are accessible after 150 years; judicial and notarial records, the civil registration and statistical records, and records containing personal data, after 100 years; and personal files, after 120 years. An access date of 60 years is prescribed for documents concerning the privacy or the national security or the national defence, provided they are listed in a special decree. A comparable scale of access dates is found in other legislation (Denmark, Federal Republic of Germany, San Marino, Rumania, Zaire). In Algeria the archives are accessible after 25 years, with the exception of criminal records, and documents concerning privacy (50 years). The access date

in Cameroon of 25 years is extended to 70 years for military and diplomatic archives and for personnel files. The archives in the Italian State Archives are all accessible, with the exception of archives pertaining to the foreign or domestic policy of the State (50 years) and those which concern the private life of people and the criminal records (70 years).

154. Apart from restrictions on access to specific categories of archives, access is sometimes restricted in general terms. In Nigeria the permission to search the archives remains an ex gratia act; there is no right of search. In India access is only given to bona fide research scholars, categories of which are listed in the legislation. In some states of the Federal Republic of Germany the searcher has to prove a "berechtigtes Interesse" (a lawful interest). In the Federal Republic of Germany (as,for example, in Bulgaria, the German Democratic Republic, Poland and San Marino) the searcher has to apply in writing for a permission to inspect the archives. In his request the subject and purpose of the research (in some countries also the documents he wishes to consult) have to be specified. In Austria, the Federal Republic of Germany and the German Democratic Republic the searcher must declare that he will not infringe any copyright or rights on privacy. In Austria the State has to be safeguarded against any liability.
According to the Local Government Act in the United Kingdom a custodian of a document. which is open to inspection, is liable to a fine , if he obstructs any person entitled to inspect the document or to make a copy thereof or extract therefrom in doing so.

155. The legislation of Belgium, Gambia, Geneva (Switzerland), Laos, Luxemburg, and the Netherlands declare the consultation of archives to be free of charge. In Czechoslovakia and Mauritius scientific research and other research in the general interest are free of charge, in San Marino, scientific research. In Australia consultation of archives is also free of charge, but consultation of machine-readable records may require payment of a charge. In countries like the

the Federal Republic of Germany the legislation leaves the possibility of imposing a fee for consultation.

156. Generally, foreigners have equal access rights with nationals, but sometimes only when reciprocity exists (Austria, Federal Republic of Germany, Yugoslavia, and Switzerland).
In Poland foreigners have only access to archives from before 1939 and - for research on Nazi crimes - to archives dating from 1939 to 1949.

157. In some cases access to records/archives which under the general rule would be closed for inspection, may be granted, mostly for purposes of scholarly research (Algeria, Austria, Cameroon, Liechtenstein, Switzerland, Zaire).

158. The restriction of access may be exempted in special cases (derogation), mostly by the same authority who is entitled to impose the restriction. An example is France, where the Minister may grant derogation, but not for statistical data concerning privacy which are less than 100 years old. This derogation may be general for certain archive groups, provided that the documents are more than 30 years old, and that the creating agency agrees. In Algeria the Archives Council, with the advice of the National Archivist, may authorize the inspection of normally closed archives for scientific purposes. In Nordrhine Westphalia (Federal Republic of Germany) archives containing personal data are closed for inspection for 100 years after the birth date of the person concerned. Earlier access may however be granted, with permission of the creating agency, to (or with the permission of) the person concerned or his successors, or for scientific purposes (personnel files excepted).

159. In Andorra, Austria, Cameroon, Canada, Rumania, and Switzerland the dispensation depends on the permission of the creating agency. According to Danish legislation some categories of archives are accessible before the limit of 50 years. Furthermore, the National

Archivist may grant access to more recent records, but in case the archives are less than 25 years old the creating agency has to give permission for inspection.

160. The researcher who profits from a dispensation has to submit his publication to the Archives in the Federal Republic of Germany, the Netherlands (if this has been prescribed at the moment of transfer) and in Switzerland.

161. The permission of the person concerned to consult archives containing personal data may lead to the inspection of archives in Nordrhine Westphalia (Federal Republic of Germany).

162. Access may be restricted by the minister responsible for the Archives (Botswana, Netherlands, New Zealand, Tanzania, United Kingdom (Public Record Office), and Zambia) or by the President (Zaire). In Botswana and Zambia this authority may be delegated to the National Archivist. Access may be restricted by the National Archivist himself in Fiji, Iceland, Japan, Luxemburg, Mauritius, and Poland. In Cameroon and in the Netherlands the head of the creating agency may ask for a restriction of access. In Cameroon the Archives Council has to give advice on such a restriction. In Sri Lanka the creating agency has to approve any restriction of access. The legislation of the German Democratic Republic, Fiji, France, Mauritius and the Netherlands provide for appeal against a decision to restrict access. French legislation prescribes that any decision to refuse access must be duly motivated.

163. In most countries access to archives in bad material condition may be refused. This applies in Geneva (Switzerland), Israel, Madagascar, the Netherlands, New Zealand, and Poland also to archives which are not consultable because of lack of arrangement and description. The New Zealand Law states

> The Chief Archivist may refuse access if he considers it ne on account of the fragile condition or pending their classi repair or other treatment. /6

Duplicates may be offered to researchers in place of the originals in Australia, Israel, and Japan. In Kroatia (Yugoslavia) originals are only consulted when there are no reproductions or when the scientific method ask for inspection of originals.

164. Consultation of archives may also be refused when they are needed for the State (Federal Republic of Germany, German Democratic Republic), or if consultation would "inconvenience the administration" (Ivory Coast, Luxemburg, Madagascar), or if it would be too much work to provide the documents (German Democratic Republic). Rather general is the authority of the archivist to withhold access "for any good cause" (Fiji, Poland), or "when the aim of consultation raises grave objections" (Nordrhine-Westphalia, Federal Republic of Germany). The Director of th National Archives of Botswana may impose "any condition or restriction" on access. In Poland, access may be denied when the searcher manifests his inability to perform archival research. According to Bulgarian legislation, the creating agency has priority over other researchers for three years following the transfer, which, in fact, constitutes an restriction on access. (See also paragraph 126). In Bulgaria it is not

> allowed to make use, outside of the archives service, for the purpose of production or propaganda, of original negatives, single duplicating negatives, duplicating film, photocopies, single copies and scientific means of reference, pertaining to all kinds of documents./7

Without the approval of the Archives Bulgarian citizens

> have not the right to transfer to foreign establishments, organizations and private persons copies of documents or information on documents of the State Archival Fonds. /8

165. Protection of privacy (or the honour of a person or a family) is in most countries a reason to refuse consultation of records/archives. Legislation concerning protection of privacy may affect access to records/archives. /[9] In countries like Australia, Canada, the Federal Republic of Germany, and the Netherlands the relation between archival legislation and legislation on freedom of information/ protection of privacy/data protection currently is a matter of concern.

In Fiji and New Zealand judicial records are only accessible with authorization of the Chief Justice or, respectively, the Minister of Justice. Criminal records in San Marino are closed for 50 years, but the Secretary of State for Internal Affairs may permit earlier consultation. In the Federal Republic of Germany and in Poland the permission of the person concerned opens normally closed records containing personal data.

166. Protection of the national security and the interests of defence and foreign policy is the other main reason of restriction of access, which in most legislation is explicitly stated. Classification of information as top secret, secret, confidential, etc., declassification, and down-grading is regulated outside the archival legislation. /[10]

167. The person who donates his archives to a public archives service may also impose restrictions on access (Botswana, Czechoslovakia, Federal Republic of Germany, Italy, Israel, Liechtenstein, Netherlands, Nigeria, Poland, San Marino, Saskatchewan (Canada), Slovania (Yugoslavia), Switzerland, Zambia). In San Marino this authority is restricted to archives less than 30 years (in Italy 70 years) old, but in Italy a restriction on access on documents concerning real property does not affect the acquirer of that property who wishes to consult the documents donated by a former owner.

Conclusion

168. One of the most basic elements of archival legislation concerns regulating access to records/archives. The student of legislation should be warned that especially in the matter of access an analysis of legal texts only will give no exact picture of the actual situation. In many countries the access date is determined by the lapse of a specified number of years. Legislation on freedom of information/protection of privacy/data protection may also affect access to records/archives. Current archival legislation authorizes the National Archivist (in some countries the Minister) to grant access to archives which would normally be closed, or to restrict access to archives which normally would be accessible. These exceptions should be formulated as strictly as possible.

FOOTNOTES TO CHAPTER 3.5

1. International Glossary of Archival Terminology, nr.2.
2. M. Duchein, Les obstacles à l'acces.
3. Bautier, Principles of legislation, p. 46.
4. The International Council on Archives is planning a study on archival problems arising from legislation on the freedom of information and on data protection.
5. Some records, however, are accessible at an earlier date under Freedom of information legislation.
6. Archivum, vol. 21, p. 214.
7. Archivum, vol. 28, p. 70.
8. Archivum, vol. 28, p. 71.
9. See footnotes 2 and 4. Legislation on data protection provides for destruction of information which, from an archival point of view, should be kept.
10. See, for example, Executive Order No. 12065 (43 F.R. 28949; 3 CFR) of the President of the United States regarding National Security Information (included in Basic Laws and authorities of the National Archives and Records Service, May 1981, pp. 241-257).

3.6 Reprography.

169. Reprography covers all copying and microcopying processes using any form of radiant energy and all duplication and office printing processes. /1 In most countries the right of access to archives (see chapter 3.5) includes the right to make or order reproductions of the archival documents. But most archives are also intellectual works, protected by a legal garantuee of copyright, that is, the exclusive right to reproduce, publish and sell the matter and form of an intellectual work./2 In current archival legislation reprography is treated in special provisions concerning the authentication (the determination that a document or a reproduction of a document is what it purports to be) /3 and the legal admissibility of reproductions as evidence. /4

170. In many countries the National Archivist is authorized to reproduce any document in his custody and to furnish customers with copies. Special provisions exist concerning the authentication and, in some legislation, the legal admissibility of reproductions.In some countries the right to copy archives is included in the right of access. Only a limited number of archival laws contain provisions on copyright.

171. An analysis of current legislation and regulations on this matter is somewhat difficult because in most cases provisions on the making and authentication of copies and the legal admissibility of such copies have been excluded from the publication of legal texts in Archivum. In the Netherlands everyone has the right to consult archives free of charge"and to make reproductions of copies of or extracts from them, or to have such reproductions, copies or extracts made at their own expense"./5 In Botswana, Malaysia, and Singapore, however publication or reproduction of public archives is forbidden without written consent of the National Archivist.

172. In most countries the delivery and authentication of copies is one of the functions of the keeper of a public archives service (National

Archives) (see chapter 1.5). In France there are special provisions for the authentication of copies of maps on the same scale as the original. In Rumania all organizations keeping records are compelled to produce certifications, copies and extracts of their records, in case the record concerns the rights of the applicant. In New Brunswick (like in Quebec ,Canada)

> The signature of the Provincial Archivist on copies of public records is proof of the fact that such records exists and are lawfully in his possession and any copy so signed and certified is equivalent to the original record and any copy bearing such signature is deemed to be so. /6

In the Netherlands every keeper of public archives is authorized to issue copies or certified extracts from the records in his custody. If the keeper is a town clerk, the copies made by him from such records as date from before 1700, have to be visaed and initialled by the State Archivist, unless the town clerk himself has been trained as a middle-grade or senior archivist.

173. In the Bahamas, Botswana, Malawi, Nigeria, as in Sri Lanka, the law says,

> A copy of or an extract from any public archives or any private document or manuscript deposited in the National Archives purporting to be duly certified as true and authenticated by the Director or any other officer authorized by him in writing for the purpose and having impressed thereon the official seal of the National Archives, shall be admissible in evidence in any proceeding in any court in like manner and to the like extent as the original document or manuscript would have been admissible. /7

Comparable provisions exist in e.g. Ireland, Rumania, Saskatchewan (Canada), Tanzania, United Kingdom (Public Record Office). In Liberia, as in the United States and in Puerto Rico,

> Whenever records that are required by Statute to be retained indefinitely have been reproduced by photographic, microphotographic, or other processes, in accordance with standards established by the Director General, the indefinite retention of such reproductions will be deemed to constitute compliance with legal requirements for the indefinite retention of such original records. Such reproductions shall have the same legal status as the originals thereof. /8

174. The Wisconsin (United States) statutes contain procedural requirements for the reproduction of records :

> any photographic reproduction shall be deemed an original record provided :
> a) That the device used to reproduce the records on film is one which accurately reproduces the content of the original.
> b) That each reel or a part of a reel of microfilm carries at the beginning a title target giving the name of the agency, brief title of records series, the disposal authorization number assigned by the board and at the end the camera operator's certificate showing the disposal authorization number, reel number, brief title of record series, a brief description of the first and last document on the reel or part of reel of film, together with a statement signed by the operator substantially as follows : I certify that I have on this ... day of..., 19.., photographed the above described documents in accordance with the standards and procedures established by s. 16.80.
> c) That a statement shall be filed with the board that the reproduction is upon film which complies with the minimum standards of quality for permanent photographic records, as established by the board, and that the film was processed and developed in accordance with minimum standards established by the board. The certificate of the operator and the statement of compliance shall be presumptive evidence that all conditions and standards prescribed by this section have been complied with.
>
> Any photographic reproduction meeting the requirements of this section shall be taken as, stand in lieu of and have all the effect of the original document and shall be admissible in evidence in all courts and all other tribunals or agencies, administrative or otherwise, in all cases where the original document is admissible. /9

In Jamaica

> If at any time after a record in a register book has been certified under subsection (1) of this section, or after a copy of a record has been certified under section 36 of this Law, it shall be discovered that a clerical mistake has been made in the copying of the record, or of the office copy, the Keeper of the Records, after such examination and enquiry as he may deem necessary, shall direct the Deputy Keeper of the Records to correct such mistake, and the Deputy Keeper of the Records shall thereupon correct such mistake in the record, and in any office copy produced to him, but in correcting any such mistakes, words originally appearing in the record or office copy shall not be erased or rendered illegible and the Deputy Keeper of the Records shall be certify under his hand upon the corrected record and office copy, that the correction was made by the direction of the Keeper of the Records, and shall state the date when such correction was made, and such correction so certified shall be read and received in evidence as part of the record or office copy. /10

175. In Botswana, Tanzania, and Zambia, the archival law provides that

> Where any work in which copyright subsists or a reproduction of such work, is comprised in any public archives which are open for public inspection in accordance with the provisions of this Act, the copyright in the work is not infringed by the making or the supplying to any person, of any reproduction of the work by or under the direction of the Director: provided that, in its application to any archive obtained otherwise than by transfer to the National Archives in accordance with section 10,the foregoing provisions of this section shall have effect subject to any express terms or conditions under which such archive was obtained. /11

The archival legislation of Fiji, Malaysia, New Zealand, Singapore, and other countries state explicitly that no provision concerning reproduction shall affect the law on copyright. In Fiji and New Zealand any person publishing a passage from a public record deposited in the Archives Office shall acknowledge in that publication the source from which that passage is taken.

Conclusion

176. Current archival legislation provides for authentication of copies of records/archives. In some countries the legal admissibility of reproductions of documents as evidence is treated in archival legislation or in legislation on evidence. Technical or procedural requirements for the reproduction of records/archives may be provided in regulations or national standards or other normative documents. Legislation on intellectual property (copyright) may affect the reproduction and/or publication of records/archives. /12

FOOTNOTES TO CHAPTER 3.6

1. International Glossary of Archival Terminology,nr. 413.
2. ISO/DIS 5127-1 (1977).
3. International Glossary of Archival Terminology, nr. 37.
4. Cf. G. WEILL, The admissibility of microforms as evidence: a RAMP study (PGI/81/WS/25. Paris, Unesco, 1981. 84 p.
5. Archivum, vol. 19, p. 53 (English translation from Nederlands Archievenblad, vol. 75 (1971) p.3).
6. Archivum, vol. 28, pp. 104-105.
7. Archivum, vol. 28, p. 334.

8. Archivum, vol. 28, p. 239.
9. Archivum, vol. 21, pp. 114-115. See also the study by G. WEILL (footnote 4) and, for example the National Standard of Canada CAN2-72,11-79 : Microfilm as documentary evidence (Microfilm - preuve littérale). On the basis of article 962 of the Swiss civil code there are detailed regulations for the reproduction of documents.
10. Archivum, vol 21, pp. 133-134.
11. Archivum, vol. 28, p. 81.
12. The International Council on Archives is planning a series of studies on the archival problems arising from legislation on intellectual property.

3.7 Personnel.

177. An analysis of legislation and regulations concerning personnel of archives services is rather difficult, not only because this matter is not covered by the texts published in Archivum, but mainly because archival legislation is usually very limited in this respect. In most countries the law provides only for the appointment of a National Archivist and the enumeration of his responsibilities (see chapter 1.5). Regulation of recruitment, appointment, and promotion and the professional qualifications of archives staff is left to regulations or staffing standards,/[1] either specific for the archives or as part of the regulations concerning civil servants in general.

178. One aspect which is regulated in most archival legislation , however, is the "professional secrecy" of archivists and records managers. The French law on archives states :

> Every functionary or agent charged with the collection or custody of archives in virtue of the dispositions of the present law is obliged to professional secrecy with respect to every document which lawfully can not be put at the disposal of the public. /2

In Botswana

> Every person appointed under or employed in carrying out the provisions of this Act shall regard and deal with all public records which are secret or confidential or to which access may be restricted as secret.
> Every person who is appointed under or employed in carrying out the provisions of this Act shall make an oath of declaration of secrecy in such manner and form as may be prescribed.
> Any person appointed under or employed in carrying out the provisions of this Act who, in contravention of the oath or declaration of secrecy made by him under subsection (2), discloses to any unauthorized person any information contained in public records referred to in subsection (1) or permits any unauthorized person to have access to such records shall be guilty of an offence. /3

The law in Tanzania and in Zambia reads :

> Where there are transferred to the National Archives or any place of deposit any public records containing information obtained from members of the public the disclosure of which is, by written law, prohibited or limited to certain purposes, the Director, the custodian of the public archives in such place

and every member of the staff of the National Archives or such place who has access to such records, shall take such oath or make such declaration relating to secrecy (with such modifications as the circumstances require) as is required by the relevant written law to be taken or made by persons having access to such records prior to their transfer; and every person who takes such oath or makes such declaration shall, for the purposes of any provision of such written law making punishable any disclosure in contravention of the written law, be deemed to be a person employed in carrying out the provisions of the relevant written law. /4

Comparable provisions exist in the legislation of other countries, for example, in the Dominican Republic, Indonesia, Lebanon, Malawi, Philippines, Senegal, Thailand, and Zaire.

In other countries the obligation of secrecy for archivists may fall under the general obligations for civil servants.

179. In a number of countries archivists have no special status, different from other civil servants, but in other countries their status is regulated by special regulations, sometimes together with the librarians. In Senegal, for example, a special decree governs the status of the personnel of the Archives and the libraries, their hierarchy, recruitment, promotion, salaries, etc./[5] The decree states the mission of each of the four categories of archivists: conservateurs d'archives, conservateurs-archivistes, archivistes, sous-archivistes. The first category (graduates from the Ecole des Chartes in Paris or with an equivalent diploma) have

> to look after the good management in the Archives. They coordinate and supervise the work of disposal, arrangement, and description of archives. They stimulate and guide research. They are the advisors of the Government in matters is the field of archives.

The second category of archivists (conservateurs-archivistes) are University-graduates who have followed the stage-technique international des archives in Paris. They

> have to assure the maintenance of the documents in their custody, and to stimulate and receive new acquisitions. They do the disposal, arrangement and description of these archives and elaborate catalogues and repertories.

The archivists of the third category (archivistes) have graduated from the EBAD in Dakar; they assist the conservateurs. The lower-

grade archivists (sous-archivistes) fulfill non-professional tasks.

180. In France /6 the title of conservateur or archiviste is exclusively reserved for graduates from the Ecole des Chartes. Only these graduates may occupy the post of director of or conservateur at a service d'archives départementaux or conservateur at the National Archives or archivist of one of the about twenty cities of the 1st category (Marseille, Lyon, Toulouse, Bordeaux, Strasbourg, etc).Below the personnel of these scientific grades (actually 82 at the National Archives and 157 in the départements) is the class of the personnel de documentation, actually 314 people, consisting of three grades in descending order: (a) chargés d'études documentaires, who have a university degree (maîtrise) and have passed an examination comprising history, administrative law and archival science; (b) documentalistes, graduates from university; (c) secrétaires de documentation (formerly called sous-archivistes) with high school certificate (baccalauréat). Furthermore there are clerks (commis et agents d'administration) who fulfill, for example, simple archival functions, personnel in the storage areas (magasiniers, formerly called gardiens), clerical staff and technical staff (photographers, restorers, etc).

181. Training of archivists and records managers is not covered by the legislation published in Archivum /7. In some countries the law contains only the requirement for regulation of training.
The archival law of the Netherlands, for example, requires the Crown to lay down provisions concerning the training and qualifications required for the positions of senior and middlegrade archivist. These have been developed in the Archives Decree, /8 which, i.a., enumerate the subjects of the training courses and the examination, and stipulate the entrance qualifications. Matters like the length of studies, fees, etc. are left to detailed regulations made by the Minister.

Conclusion

182. The conclusion from a very limited survey of legislation and regulations concerning personnel may be that it seems not feasible to include in archival legislation provisions concerning the personnel of archives and records management services. Only a special study

of the regulations and of the practical situation in a number of countries could reveal common elements which could perhaps serve as a basis for guidelines concerning model job descriptions, staffing standards, organization of training, etc.
The only aspect which is treated in most legislation is the professional secrecy of archivists and records managers.

FOOTNOTES TO CHAPTER 3.7

1. DELMAS, Archives, p. 310 gives useful standards for the recruitment of the different categories of staff for a typical national repository. This subject has been treated also by the 12th International Conference of the Round Table on Archives, 1979, see: Actes de la onzième et douzième conférences internationales de la Table Ronde des Archives.
2. Archivum, vol. 28, p.292 (author's translation).
3. Archivum, vol. 28, pp. 76-77.
4. Archivum, vol. 20, p. 130.
5. Information supplied by S. Mbaye, Director, National Archives of Senegal.
6. Information supplied by M. Duchein, Inspector General, Archives de France.
7. Cf. M. COOK, Guidelines for curriculum development in records management and the administration of modern archives; a RAMP study (PGI/82/WS/16). Paris, Unesco, 1982, 74 p.; M.COOK, An international standard for the training of archivists and records managers, in: Unesco Journal of information Science, Librarianship and Archives Administration, vol. 4, no. 2 (1982) pp. 114-122.
8. English translation in Nederlands Archievenblad, vol.75 (1981) pp. 190-208.

4. ENFORCEMENT.

4.1 Penal provisions.

183. To ensure the enforcement of laws they should include sanctions. The desirability of sanctions to enforce the right of inspection, the inalienability of public archives, the protection of private archives, the control of export of private archives, and the professional secrecy have already been mentioned.
Apart from specific penal provisions regarding these matters, most legislation contains a general clause prohibiting the damage, mutilation, destruction, removal from custody etc. of public archives. An example of such a general clause is in the legislation of New Brunswick (Canada) :

> Any person who unlawfully damages, mutilates or destroys any public record or removes or withholds from the possession of the archives or a department any public record commits an offence and is liable on summary conviction to a fine not exceeding one hundred dollars. /1

Comparable provisions are found in the legislation of Algeria, Chile, Guatemala, Ivory Coast, Lesotho, New South Wales (Australia), Puerto Rico, Senegal and Zaïre. In Haïti, Illinois (United States), Philippines and Singapore, this clause is restricted to public offices Elsewhere, the obligations for public offices are laid down in special legislation or in a criminal code.

184. The legislation of Iceland and Malawi contains a very general clause:

> Violation of this regulation shall be liable to public prosecution and to a fine up to 10 thousand krónur, except when a heavier sentence is directed by law (Iceland). /2
> Any person who fails or refuses to comply with any term or condition of any permission, authority or licence given under this Act shall be guilty of an offence.
> Any person who commits an offence under this Act shall be liable to a fine of K 2.000 or to imprisonment for a term of five years, or to both such fine and such term of imprisonment (Malawi)./3

In Sierra Leone it is left to the Minister to provide any regulation for penalties for the wilful destruction, damage and removal of public

records. The French criminal code specifically rules that the penal provisions concerning mutilation and destruction of documents and objects are applicable in case of an exhibition organized by a public authority, regardless of the ownership of the document or object. The Bulgarian law states :

> An employee, who is obliged to ensure suitable conditions for the preservation of archival documents but who has not done so and thus has caused their loss, deterioration or destruction, shall be punished by a fine of up to 300 leva, unless he is subject to a heavier punishment.
> A fine of up to 200 leva shall be imposed on a person, unless he is subject to a heavier punishment, in case that (a) the person does not carry out an order of an administrative body of the State Archival Fonds, regarding the collecting, registering, handling, preserving or using of archival documents; or (b) the person does not take measures for the preservation of the documents of the establishment or the organization on their re-organization or liquidation.
> A fine of up to 100 leva shall be imposed on a person, unless he is subject to a heavier punishment, if that person does not fulfill another obligation deriving from this law or from a normative act on its application. /4

185. Some examples of specific penal provisions - apart from those related to matters treated in earlier paragraphs - are

> Every person who, upon termination of his functions, may, even without fraudulous intention, remove public records which are in his custody because of his functions, shall be punished (France)./5
> The penalty of <u>prision mayor</u> and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary, who taking advantage of his official position shall falsify a document by committing any of the following acts : 1. Counterfeiting or imitating any handwriting, signature or rubric; .... 6. Making any alteration or intercalation in a genuine document which changes its meaning (Philippines)./6

In other countries comparable provisions will be found in the criminal code.

<u>Conclusion</u> 186. Most current archival legislation prohibits the damage, mutilation, destruction, removal from custody, etc. of public records/archives, apart from sanctions to enforce the right of inspection, the inalien-

ability of public archives, the control of export of private archives and the professional secrecy of archivists and records managers. Some or all of these subjects may be treated in a criminal code.

FOOTNOTES TO CHAPTER 4.1

1. Archivum, vol. 28, p. 105.
2. Archivum, vol. 17, p. 247.
3. Archivum, vol. 28, pp. 257-258.
4. Archivum, vol. 28, p. 65.
5. Archivum, vol. 28, p. 107 (author's translation).
6. Archivum, vol. 20, p. 225.

5. GUIDELINES FOR LEGISLATION AND REGULATIONS.

5.0 Introduction.

187. This chapter provides a summary of the main subjects which should be considered for inclusion in archival legislation and regulations. A number of these subjects have already been treated in the NATIS guidelines (chapter IV and V), but in order to present a set of self-containing guidelines, this study cites, where appropriate, the relevant parts of the NATIS recommendations as NG, with the paragraph number. Other references are to paragraph numbers in the present study.

188. This summary distinguishes between essential subjects that should be treated in the law and matters that are desirable or optional and that could be treated in regulations. The greatest care must be taken in applying these guidelines to the structure and objectives of the archival services in a given country. Regulations can more easily be changed than laws and offer consequently a flexible basis for the implementation of archival and records management programmes. Their flexibility, however, could prove to be a disadvantage in times of political or financial difficulties since archival and records management programmes may be altered through simple change of the regulations or even through interpretation of too flexible regulations.

Regulations issued by the minister responsible for the Archives may lack the necessary authority with institutions responsible to other ministers. Therefore the law should define clearly the distribution of competencies and authorities.

In most countries the hierarchy of legislation includes, after the law (act of Parliament) but before ministerial regulations, ordinances, decrees etc. issued by the Crown, the President, or the Council of ministers, etc. Where possible, regulations with such a supra-ministerial authority are preferable to regulations by a minister or by the archival administration itself. In general, the demarcation between the law and regulations depends to a great extent on the legal tradition and administrative practices in a particular country.

5.1 Definition of records and archives in general (see para.13-25).

189. Every archival law should define public records in order "to avoid ambiguity about the scope of the responsibility of the National Archives"(NG para. 125). To set out the difference between archival legislation and legislation in other information fields, it is essential that the definition of records makes it clear that records are created, received and maintained by an institution or individual in the transaction of its business. It is not always advisable to restrict the definition to public records, because legislation will necessarily affect, to some extent, private records and archives.

190. Enumeration of physical types or forms in the definition of records always lags behind new technology, and thus creates continuing problems of interpretation /[1]. Therefore a definition in general language, covering recorded information, regardless of physical form or characteristics, is essential (NG para. 126). Such a general definition could be elaborated in regulations or a circular letter, by giving a non-exhaustive enumeration of types and forms of documents and other materials that are included in the definition.

5.2 Definition of public records and archives (see para. 26-32).

191. "It is important that legislation for public records should be applied not only to the whole range of bodies which discharge the legislative, judicial and administrative functions of the State, but also to State-controlled corporations and all other organizations directly or indirectly controlled by government, which can be considered as public bodies. Failure to provide for statutory control over the widest possible range of public bodies defeat much of the purpose of archival legislation"(NG para. 127).
A definition referring to the origin of records (i.e. to provenance) tends to reflect the professionally accepted definition of records (para. 15), rather than a definition that refers to ownership. The last type, however, which has been linked with the British concept of "undisturbed custody" of records as the basis

for their evidential value, is used where the intention is to include historical manuscripts and other documentary property belonging to the State. "Whatever method of definition is used, it is desirable to ensure against omission or future changes in the status of public bodies by providing some formal means, without resort to new legislation, of extending statutory control to any records which on grounds of a technical interpretation of the definition or for other reasons, appear to be excluded" (NG para. 127).

5.3 Inalienability and imprescribility of public archives.(see para.33-37).

192. Public archives are public property, part of the public domain, and therefore inalienable and imprescribable. These qualities of archives may, depending on the law of a given country, be made explicit in an archival law. The National Archives should have a right to replevin (or, at least, a right to make copies) of public archives which have gone astray (NG para. 145).

5.4 Non-public archives (see para 38-50).

193. The National Archives should be entitled by law to acquire private archives (NG para.143). Legislation should be considered making the National Archives responsible for the compilation and maintenance of a register of all archives of non-public provenance and all documentary collections with research value. The law should oblige owners and custodians of such "registered" archives to preserve them in the best available conditions. Any change in the place of their deposit should be reported; and any proposal to sell or otherwise dispose of them should be referred to the appropriate authority. Export of such archives should be forbidden, or should be subject to the approval of the competent archives authority (NG para. 159). The State may be given a right to preferential purchase of private archives.

5.5 Functions and organization of public archives services (see para 51-61

194. The following functions of public archives services (national, regional, local and special archival institutions) should be statutory, apart from records management functions outlined in paragraphs 200 and 201 :

(i) the safe custody in suitable buildings and in suitable environmental conditions of all(national)archives, from whatever public or non-public source transferred, including archives in audio-visual, machine-readable and all other forms;

(ii) the arrangement and classification of archives according to accepted archival principles and methods;

(iii) the provision of means of reference by whatever means are available and appropriate in order to facilitate access to archives and the retrieval of information in them;

(iv) the provision of search or reference rooms in which suitable facilities are available for the inspection of archives which are lawfully open to the public,and the provision of other reference services (for dealing with postal inquiries, etc.) which are necessary;

(v) the provision of facilities for making copies of archives by photographic or other reprographic processes, and for selling such copies;

(vi) the provision of facilities for the repair and conservation of archival material of all kinds by appropriate methods;

(vii) the publication of guides, texts, calendars, inventories, finding-aids and any other works suitable for publication prepared by staff of the Archives or commissioned by the Archives;

(viii) the promotion of the educational value of archives in appropriate ways including the preparation of exhibitions and the loan of documents to exhibitions organized by other institutions (NG para.148).

195. The formal authority to take actions in respect of public records may be vested with the Minister or with the National Archives or some supreme archival authority. The NATIS Guideline (NG para.151) does not express a preference. There are good reasons, however, to prefer a distinction between professional and political responsibilities,

to be reached by giving the National Archives a form of self-government and keeping them somewhat independent from the Minister./[2]

In most countries it is not a task for legislation to define the internal organization of any organization or its staffing arrangements. It is essential, however, for public archives legislation to authorize the appointment of the head of the National Archives and to define his statutory duties and responsibilities. Details of internal structure and organization, which require some degree of flexibility to meet changing conditions, and the recruitment and qualifications of staff, are matters for which statutory authority is usually considered unnecessary and may be dealt with by the general staffing regulations drawn up for the Government service(NG para.149).

196. Regarding the internal organization of archives services, inclusion in the law may fix the organization, leaving not much possibility for development and necessary changes. Delmas /[3] gives a theoretical organization chart of an archives service in three stages of growth./[4] In 1977 the following principles were adopted by The National Association of State Archives and Records Administrators (United States) to assist the several States in the establishment and operation of State archival and records management agencies :

I. Legislation.

Comprehensive legislation which recognizes the fundamental nature of the relationship of government records as instruments of accountability by the government to the people, evidence of public and private rights and obligations, an informational source on matters involving the continuous administration and management of the government;preserves the patrimony of the State as evidenced in its records; and provides exclusive authority to carry out archives and records management functions and responsibilities on a government-wide basis.

II. Institutional identity.
The institutional character of the agency as the repository of the permanently valuable records of the government to provide sufficient autonomy for its protection against political interference, including tenure for the agency head, civil service protection for its personnel; and control of agency facilities, equipment and resources.

III. Organizational placement.
Placement within the government that prevents the submission of the agency beneath competing interests; eliminates blurring of functions with other professional agencies and disciplines; protects against interference with agency program responsibilities under the color of coordination authority; and eliminates hampering supervision and control by having little or no professional knowledge of its program responsibilities and operations.

IV. Program authority.
Sufficient authority for the agency to define records problems and needs of the State, to prescribe appropriate programs, and to effectively administer the programs.

V. Exclusive responsibility.
Exclusive program responsibilities that do not diffuse the primary responsibility of the agency for government records.

VI. Appropriation and expenditure.
Funding by direct appropriation to the agency by the Legislature with authority to budget and expend such funds.

VII. Internal policy.
Exclusive agency determination of the internal policies and professional needs of the agency.

VIII. Regulations and standards.
Power to prescribe and enforce rules, regulations and standards relating to government records administration. / 5

5.6 National archives system (see para.62-69).

197. "Always a matter of legislative concern, the organization of public archives is closely related with the administrative system of each country"./ [6] In any circumstances it will be necessary to establish a central organization, with executive and advisory functions, responsible to a Minister charged with the implementation of an agreed national archives policy (see paragraph 198). In some countries it would be appropriate for these co-ordinating functions to be exercised by the National Archives, or at least by a separate Directorate within it; in some it would be more suitable to create a separate executive authority; and in others, where it is constitutionally impossible to provide central direction, it should be possible to achieve some measure of co-ordination by a suitably constituted Advisory Council, with no executive powers (NG para.161).

5.7 Ministerial responsibility (see para.70-72).

198. A matter which requires legislative action and which demands careful consideration is the choice of the minister responsible for the archives (NG para.150)./ [7] The Natis guidelines review the arguments for placement of the archives under the minister for cultural affairs and express a preference for a minister who has a considerable degree of inter-ministerial influence or authority. Such a preference is based on the fact that an archives service should be deeply involved in across-the-board records management activities which might be more effectively performed with the support of such a minister. This matter was discussed during the 19th International Conference of the Round Table on Archives /[8], which advocated placement at the highest level of inter-ministerial or supra-ministerial authority. But in this respect "no system can be said to be ideal" /[9], especially when one takes into account that the best placed minister is the one personally interested in the work of the archives, and such placement cannot be guaranteed by legislation.

5.8 Advisory Body (Archives Council) (see para. 73-83).

199. In some countries there may be a preference to give the Archival Council executive and/or supervisory powers, depending on the stru-

ture of the national archives system (see para. 197) In most archival laws however, the Archives Council is simply an advisory body to enlist the participation/representation of producers and users of archives in the formulation and implementation of records management and archival policy /[10]. The law should determine the function, the main responsibilities and the composition of the Archives Council. The details of its membership and functioning should be regulated in regulations /[11].

The Council should be consulted on all projects of a legislative chracter relating to records/archives, the establishment or modification of the archival network and all draft records schedules. It may be desirable to also consult the Council on postponement of transfer, restriction of access, and the training programme. The Council may be called upon to participate in the drafting or revision of archival legislation and/or regulations.

The law should specify that the Archives Council consists of members ex officio (among them the National Archivist) and members appointed by the Head of State or the Council of Ministers.

5.9 Records management. (see para. 84-92).

200. The seventh International Congress on Archives (1972) highlighted the lack, in nearly all except the socialist countries, of special legislation which clearly formulates rights and obligations of administrative archives./[12] The degree of control exercised by archive services over current records varies widely from one country to another. /[13] The very minimum should be a right of inspection (see para.202), together with control over appraisal, destruction and transfer (see paras. 204 and 205). The involvement of the National Archives in records management /[14] should preferably extend to the formulating of standards, procedures and guidelines and training of agency records offices. Maximum involvement -statutory responsibility for the whole range of records management functions-(desirable as it would appear to be),will not be feasible in many countries, and indeed, in the USA there has been a recent revision in this position.

201. Regulations and/or circulars should regulate :
- responsibilities of the registries
- professional qualifications, training,
- records creation (incl. forms management, standards on media, equipment and supplies, paperwork management)
- filing (filing plans may be approved by the National Archives)
- security classification
- arrangement and description of records
- consultation, lending (communication of records/archives)
- reprography
- vital records management
- preservation

5.10 Right of inspection (see para. 93-99).

202. The legal link between records management and the Archives is formed by giving the latter a right of inspection, not only regarding the disposal of records, but, in principle, of all records management functions and operations involved with current and semi-current records. Inspection is useless without a provision for sanctions as an ultimate remedy.

5.11 Records centres (see para. 100-102).

203. There should be legislative authorization, where possible, enabling a National Archives to establish and operate records centres if circumstances demand such action; power to compel government departments and agencies to transfer non-current records to a records center is also necessary (NG para. 133).

5.12 Appraisal and destruction (see para. 103-115).

204. The law should oblige all bodies producing public records not to destroy without account being taken of long-term research values, and the National Archives must have responsibility for ensuring that such values are indentified and that records of research

interest are preserved (NG para. 132).

5.13 Transfer (see para. 116-131).

205. The main statutory requirement for transfer is that public records selected for permanent preservation (which have been in existence for more than a prescribed number of years) should be transferred to the National Archives (NG para. 134).

5.14 Deposit of official publications (see para. 132-136).

206. Prescription of legal deposit of books and other printed publications does not belong to the domain of archival legislation. However, a record copy of every government publication should be deposited in National Archives, whether or not a legal deposit with the National Library exists.

5.15 Preservation (see para. 137-142).

207. The first responsibility of the National Archives, and indeed of any archival institution, is the safe custody in suitable buildings and environmental conditions of all archives. Legislation should authorize the National Archives to provide for facilities for the repair and conservation of archival material (NG para. 148). The regulations should lay down security measures./[15]

5.16 Arrangement and description (see para. 143-149).

208. Legislation should ensure that all public records are kept under sufficient administrative and intellectual control. One of the functions of any archives service should be the arrangement and classification of archives according to accepted archival principles and methods and the publication of guides, inventories and other finding aids.

5.17 Access (see para. 150-168).

209. The right of access to public records, subject to prescribed conditions intended to protect their safe custody and physical condition,

should be clearly stated in archival legislation. The most important aspect of this matter for consideration is the term of years after the creation of documents during which public records should normally be kept closed and are not available for research. In most countries consideration of this question has led to the general opening of records when they are more than 25 or 30 years old. Whatever closure period is adopted, it is necessary to provide machinery for giving access to some documents after shorter or longer periods by making general exceptions, and to allow access to closed records by individual research workers in exceptional cases (NG para. 140-142). /[16]

5.18 Reprography (see para. 169-176).

210. It is desirable that archival legislation provide that there is no breach in copyright when any document, open to public inspection and in the custody of the National Archives or other public archives service, is copied or published (NG para. 147).

211. It may be considered necessary to include in archival legislation a provision that the legal validity of records in government departments or other organizations is not affected by their transfer to the National Archives. Legislation should also provide that the National Archives or other archival authority lawfully holding such records may certify any copies of documents (NG para.146).

5.19 Personnel (see para. 177-182).

212. It is essential that the law provides a basis for detailed regulations on the recruitment, appointment, promotion, professional qualifications, and training of archives staff.

5.20 Enforcement (see para. 187-186).

213. Apart from special penal provisions enforcing the right of inspection, the inalienability of public archives, the protection and control of the export of private archives and the professional

secrecy of archivists are records managers, legislation should include a general clause prohibiting the damage, mutilation, destruction,and removal from custody of public archives.

FOOTNOTES TO CHAPTER 5.

1. Evans, Cyprus, paragraph 3.9.
2. Carbone-Guêze, Draft model law, p. 24.
3. Delmas, Archives, p. 292.
4. See also Actes des dix-huitième et dix-neuvième conférences internationales de la Table Ronde des Archives, pp. 108-161.
5. Principles for State Archival and Records Management Agencies, Atlanta: National Association of State Archives and Records Administrators, 1981.
6. Duchein, Legislative foundations, p. 39.
7. Rhoads, The role of archives and records management.
8. Actes des dix-huitième et dix-neuvième conférences internationales de la Table Ronde des Archives, pp. 135-136.
9. Duchein, Legislative foundations, p. 39.
10. Cf. Delmas, Archives, p. 305.
11. Cf. Delmas, Archives, p. 306.
12. Dolgih, La Liaison, pp. 38-39.
13. M. Duchein, Preface to Archivum, vol. 28, p. 17.
14. Rhoads, The role of archives and records management, discusses the component elements and other characteristics of modern records management systems and services.
15. Bautier, Principles, pp. 56-57.
16. Duchein, Les obstacles à l'accès.

30. NATIS Guideline, paragraph 140-142; Duchein, Les obstacles à l'accès.
31. NATIS Guideline, paragraph 147.
32. NATIS Guideline, paragraph 146.

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